UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

IN RE:	.	Case No. 21-30085-HDH-11
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NATIONAL RIFLE	.	Earle Cabell Federal Building
ASSOCIATION OF AMERICA	.	1100 Commerce Street
and SEA GIRT, LLC,	.	Dallas, TX 75242
	.	
	.	May 3, 2021
Debtors.	.	8:02 a.m.
. . . . .		A.M. SESSION

TRANSCRIPT OF CLOSING SUMMATIONS
BEFORE HONORABLE HARLIN DeWAYNE HALE
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

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I N D E X

THE COURT: Good morning. This is the Bankruptcy Court in Dallas in the National Rifle Association of America case. We have some folks that have signed in. Let me do that quick and then take appearances of anybody else that would like to make an appearance.

Mr. Mason and your group?

MR. MASON: Good morning, Your Honor. We are here and present.

THE COURT: Welcome.

Mr. Pronske, Van Horn?

MR. PRONSKE: Your Honor, we are here. And for the Attorney General's Office Jim Sheehan, Emily Stern, Monica Connell, and Stephen Thompson, Jonathan Conley, Yael Fuchs, Lucas McNamara, Sharon Sash, and William Wang. And we're all here representing Letitia James, the Attorney General for the State of New York.

THE COURT: I note for the record that you're not doing that by memory, Mr. Pronske. I see you reading something.

Mr. Neligan, Buncher, and Gaither?

MR. NELIGAN: Good morning, Your Honor. Pat Neligan and Doug Buncher, as well, who's on the line.

THE COURT: Welcome.

Ms. Lambert and Mr. Salitore?

MS. LAMBERT: Good morning. Lisa Lambert and Marc

Salitore are present.

THE COURT: Welcome.

Strubeck, Drake, Hendrix, and Ms. Smith?

MR. STRUBECK: Yes, Your Honor; good morning. All of us on behalf of the Official Committee of Unsecured Creditors.

THE COURT: Welcome. Ms. Jackson for the D.C. Attorney General?

MS. JACKSON: Good morning, Your Honor. Catherine Jackson for the D.C. Attorney General's Office.

THE COURT: Welcome back.

Mr. Garman and group?

MS. JACKSON: Thank you.

MR. GARMAN: Yes, sir. I'm here with my colleagues, Mr. Noall, Ms.

Taylor and Watson?

MR. TAYLOR: Good morning, Your Honor. Jermaine Watson and Clay are here.

THE COURT: Welcome. Mr. Garman and your group?

MR. GARMAN: Yes, sir. I'm here with my colleagues, Mr. Noall, Ms. Kozlowski, Mr. Ciciliano. Mr. Robichaux is in the room with his colleague from Ankura, Mr. Morton. Mr. Neligan made his appearance already. We're here together, and Mr. Correll is also present today.

THE COURT: Welcome.

Mr. Taylor and Mr. Watson?

MR. TAYLOR: Good morning, Your Honor. Clay Taylor here on behalf of Journey, et al.

THE COURT: Welcome.

MR. WATSON: Judge, I'm here, as well. Thank you.

THE COURT: Welcome back.

Anyone else wish to make an appearance that I haven't called?

MR. HERRING: Yes, Your. Walt Herring is here on behalf of David Dell'Aquila.

THE COURT: Welcome. And just to let everyone know, I think they do know from Friday, Mr. Herring asked for five minutes. He's joined in one of the motions, and I said that that would be fine.

Anyone else like to make an appearance?

(No audible response)

THE COURT: All right. I think we have a breakdown of the times. Let me also say we have plenty of time by my calculation. I'm not going to hold anybody to the minute, but if you would try to stay as close to your estimates as possible. I think that lets us get everything in today that we need to get in.

And I show that was the Attorney General going to go first or Ackerman?

MR. PRONSKE: Attorney General, Your Honor.

THE COURT: Okay. And my memory is that you want to

go about an hour-ten, and then save twenty at the end as I said on the first day. Is that right?

MR. PRONSKE: That is correct; thank you.

THE COURT: All right. You may proceed.

MR. PRONSKE: Thank you, Your Honor. Good morning. Gerrit Pronske for the Attorney General of the State of New York. We are here this morning to present closing arguments on the New York Attorney General's motion to dismiss this bankruptcy case as a bad-faith filing and, in the alternative, to appoint a Chapter 11 trustee over the NRA.

I will begin the presentation with the presentation of the Attorney General's motion to dismiss. The evidence presented in this case has clearly shown that the NRA and Sea Girt bankruptcy cases were filed in bad faith and should be dismissed under Section 1112 of the Bankruptcy Code for the four following reasons.

One, these cases were improperly filed for a pure litigation strategy purpose, in the words of the NRA, to dump New York.

Two, the NRA clearly and undisputedly had no financial reasons to file this bankruptcy whatsoever.

Three, the bankruptcy filings in Texas were clearly and cavalierly the result of impermissible forum shopping.

And, four, these bankruptcy cases were not -- were filed not only without board approval but with management of

the NRA intentionally deceiving the board.

Number one, Your Honor, this case was filed for a pure litigation strategy purpose, to dump New York, which basically means to escape regulation in the New York proceeding. Bankruptcy law is clear that a bankruptcy filing as a litigation strategy is a bad-faith filing necessitating the dismissal of the base. The case law is clear about the existence of the bad-faith remedy.

Every circuit in the country has a good-faith filing requirement for the filing of a Chapter 11 bankruptcy. In the Fifth Circuit, of course, we have the matter of Little Creek Development case in which the Fifth Circuit says that: "every bankruptcy statute since 1898 has incorporated literally or by judicial interpretation a standard of good faith for the commencement, prosecution, and confirmation of bankruptcy proceedings.

In the Investors Group, LLC, case, and that's a case where in the Northern District of Texas, District Judge Lindsay affirmed the dismissal of a bankruptcy case that was ruled by Judge Jernigan of the bankruptcy court. That case has very strong language about what happens when a case is filed to obtain a litigation advantage, like the NRA did in this case.

That court said: "when a bankruptcy court finds that a party pursues bankruptcy for the purpose of securing litigation advantage in another forum, such intent is

dispositive. It establishes bad faith and necessitates dismissal."

Let's review the testimony relevant to the reasons that the NRA filed bankruptcy. And, Your Honor, like most all the evidence that goes to the dismissal issues in this case, this testimony and the reason for the filing of the NRA bankruptcy case are not in dispute.

Let's look at Wayne LaPierre's testimony regarding the reasons for filing bankruptcy. Mr. LaPierre said on the screen here, "Okay" -- and this was a question that was being asked by Mr. Gruber, and Mr. LaPierre said, "Okay, you're asking me if you take New York State and all of New York weaponized-government actions out of it, would the NRA have filed Chapter 11? Is that your question?" Mr. Gruber says, "Would they need to file Chapter 11, yes, essentially." And Mr. LaPierre answers, "No."

Mr. LaPierre goes on to say that the reason for the filing of the bankruptcy was in his words to abandon the corrupt political and regulatory environment in New York. And, of course, from this quote, we can see that Mr. LaPierre is saying that if it weren't for the New York Attorney General case, the NRA would never have filed bankruptcy.

As far as the second evidence on this, Your Honor, there was a letter to members that was issued by Wayne LaPierre on behalf of the NRA the day of the bankruptcy filing. And

that's New York Attorney General Exhibit 151.

This, among many things in this letter, the letter says: "The plan can be summed up quite simply. We are dumping" -- in all capital letters -- "New York and we are pursuing plans to reincorporate the NRA in Texas." The testimony of John Frazer, the NRA's general counsel and corporate secretary, agreed with this and testified that dumping New York was the reason for the filing of the NRA bankruptcy.

Debtors' counsel in his opening statement, rather than attempting to deny that the NRA bankruptcy was filed to dump New York, actually embraced that fact. But he added a twist to attempt to distinguish these cases and save them from being dismissed for bad faith. The twist raised by debtor's counsel is that the NRA in this case is trying to create essentially an exception or a defense to the well-recognized rule that you can't file bankruptcy for strategic advantage in litigation.

They are likening dissolution sought by the New York Attorney General to a foreclosure of the debtors' assets, a more traditional bankruptcy-type proceeding. They're essentially saying that when dissolution threatens the entire existence of the entity, like a foreclosure of primary assets, that existential threat provides the bankruptcy proceeding with the legitimacy that it needs to survive a bad-faith attack. I'm going to call this the dissolution defense to a bad-faith

filing.

With that bit of background regarding the reasons for the filing of the NRA bankruptcy and the legal impact of a filing of bankruptcy to secure a litigation advantage and the raising by the NRA of the dissolution defense, the Court raised an interesting and highly significant issue last Thursday that plays into the NRA's argument that being the target of a potential dissolution could somehow immunize the NRA case from being dismissed for bad faith.

The Court's issue was stated by Your Honor as follows: "But while one purpose of Chapter 11 is to prevent the unnecessary dissolution of an otherwise viable debtor, is that purpose broad enough to include a situation where the debtor is seeking protection from potential dissolution that would not be a collateral effect of litigation but rather the intended relief sought and it would only occur upon a judicial determination that dissolution is in the best interest of the public."

As this Court requested, I would like to now address this Court's question. And actually, Your Honor, the wording of the Court's question perfectly frames the issue. Paraphrasing, the Court's question seems to me to draw a distinction between, one, a dissolution that is the collateral effect of litigation such as a foreclosure on debtors' assets or a seizure of the debtor's assets following the rendering of

a judgment and, two, a dissolution where that dissolution is actually the intended relief sought by a judicial determination that it is in the best interest of the public.

The second prong of the Court's question, that being situations where the dissolution is actually the intended relief sought by a judicial determination in the best interest of the public, raises a fascinating question that we actually have been looking at for quite a bit of the time the last several weeks.

In order to answer the Court's question, we need to drill down to two further questions or issues. One, the first issue is whether the New York proceeding under New York law constitutes the exercise of police and regulatory power of the State of New York.

To answer that question, let's look at the purpose of the New York Attorney General's Charities Bureau which is that it is responsible for supervising charitable organizations to protect owners and beneficiaries of charities from unscrupulous practices in the solicitation and management of charitable assets. The Charities Bureau Division supervises the activities of charities such as the NRA, a 150-year-old charity, to ensure that their funds and other property are properly used and to protect the public interest in charitable gifts and bequests contained in wills and trusts.

To drill down a little more specifically to the

situation where the subject of a particular proceeding is a request for a dissolution of the charity, the statutory law in New York clearly indicates that the New York proceeding is a proceeding under the police and regulatory powers of the State of New York.

Section 1109 of NPCL is the section of the New York not-for-profit statutes that governs over dissolutions. (b)(1) of Section 1109 says in very clear language that in making the decision of dissolution, "the Court shall take into consideration the following criteria: one, in an action brought by the attorney general, the interest of the public is of paramount importance."

Your Honor, I submit that Section 1109(b)(1) is the classic well-recognized language that elevates proceedings to the level of police and regulatory powers of the state. So the answer to the first question or the first issue is, yes, the New York proceeding under New York law clearly constitutes the exercise of police and regulatory power of the State of New York.

The second question or issue to answer this Court's question then looks at the interplay of New York charity law and federal bankruptcy law and asks whether the police and regulatory power of the state is, one, to protect its own pecuniary or money interests or, two, to protect the interests of the public.

That question is what type of police and regulatory powers is implicated by New York law's charity dissolution provisions. Since this bankruptcy case is pending in Texas, we look to the Fifth Circuit and find an extremely clear decision in the Fifth Circuit that provides the answer to what type of political and regulatory -- I'm sorry -- police and regulatory powers we are dealing with. And that is the Halo Wireless case decided by the Fifth Circuit in 2012.

The Fifth Circuit held in the matter of Halo Wireless that bankruptcy cases do not stop or impact the regulatory power of government when that regulatory power is for the purpose of protecting the interests of the public, like in the New York proceeding. If instead the government is exercising its regulatory power to protect its own pecuniary interests, then bankruptcy might be more like the first example in the question raised by the Court on Thursday where dissolution might be the collateral effect of litigation.

I would submit, Your Honor, that the NRA's dissolution defense could potentially have more legitimacy if the government was attacking them to further the government's own pecuniary interest. However, when government is prosecuting a case to pursue non-pecuniary governmental regulatory power to protect the public, bankruptcy law does not and will not impact the regulatory proceeding.

Put into the context of the NRA case, the dissolution

defense to the bad-faith filing is ineffectual because neither the NRA nor this bankruptcy case have power to stop the ultimate dissolution of the NRA as it is clearly under governing statutes the exercise of public-interest police and regulatory powers.

Therefore, Your Honor, the whole bankruptcy case becomes a mere continuation of the NRA's dysfunction. It is a circuit sideshow that eventually ends up without succeeding to stop the New York proceeding including the potential of dissolution.

Back to the Court's question, which is basically can the specter of a potential dissolution be a defense to a bad-faith filing when the dissolution is a judicial determination that is, in the words of Halo Wireless, a public-interest police and regulatory action.

Quotes from the Fifth Circuit's Halo Wireless case provide a solid way to dispel the NRA's dissolution defense to a bad-faith filing. Without that defense, Your Honor, this case is nothing more than a pure litigation strategy whose filing was nothing more than an admission of bad faith and must lead to its dismissal.

Halo Wireless is an automatic-stay case, but that actually strengthens its application to the dismissal motion. The automatic stay, Your Honor, is a temporary respite. The exceptions to the stay are situations that are so strongly

outweighing the bankruptcy concerns that the debtor doesn't even get a temporary respite.

In the Halo Wireless case, the court said, and I want to just read four quotes from this case that I think are very on point to this situation. First, the Fifth Circuit said: "This exception discourages debtors from submitting bankruptcy petitions either primarily or solely for the purpose of evading impending governmental efforts to invoke the governmental police powers to enjoin or deter ongoing debtor conduct which would seriously threaten the public safety and welfare."

The Fifth Circuit goes on to say: "A fundamental policy behind the police or regulatory power exception is to prevent the bankruptcy court from becoming a haven for wrongdoers." That's some pretty strong language as it relates to the NRA bankruptcy case, as we'll see as we move further.

The third quote says: "The exception to the automatic stay helps to ensure that debtors do not use a declaration of bankruptcy to avoid the consequences of their actions that threaten the public interest." This quote, Your Honor, could not be more on point to the NRA case.

Finally, Fifth Circuit says: "The purpose of the exception is to prevent a debtor from 'frustrating necessary governmental functions by seeking refuge in the bankruptcy court.'" And isn't it true, Your Honor, that the quote "frustrating necessary governmental functions by seeking refuge

in the bankruptcy court" sounds amazingly similar to the catchphrase "dump New York?"

I've taken a long time to answer the Court's question. It's a powerful question, and the importance of this issue requires a thoughtful response. I hope this has been somewhat helpful.

Now let's review some more of the NRA's act that strongly argue for dismissal of the case. Interestingly, Your Honor, Wayne LaPierre had to admit that the New York courts are not corrupt and that it is the Court that would potentially dissolve the NRA, not the New York Attorney General, with then two levels of appeal that he admitted were not corrupt. Mr. Frazer, the general counsel of the NRA, essentially mirrored that testimony.

But having said that, Your Honor, it really doesn't matter what Wayne LaPierre or Mr. Frazer think and whether they think the courts in New York hearing these cases are corrupt or not corrupt. Why? Because litigants don't get to avoid courts they don't like. They don't get to forum shop, and they don't get to file bankruptcy as a strategy in litigation in any court even if they think that court is in their own assessment corrupt.

This is why we have appeals courts, and this is why the case law says that bankruptcy cases that are the result of forum shopping get dismissed.

Interestingly, Your Honor, Judge Phillip Journey, who is an NRA member since the 1970s and a member of the board of directors of the NRA, does not agree with Mr. LaPierre's characterizations that the New York case is unfounded corrupt proceeding. Judge Journey testified that he believes that the allegations in the New York case were backed up by civil discovery, that there was significant support for the Attorney General's allegations, and that the NRA's corporate governance was worse than he ever imagined.

The second reason for dismissing this bankruptcy case, Your Honor, is that the NRA clearly and undisputedly had no financial reasons for filing bankruptcy. As you know, Your Honor, federal courts are courts of limited jurisdiction, many of which are set up to deal with a particular type of case and are not for general use to achieve something for which that court was not established.

For example, to file a federal tax case, you need to have a tax problem. To file a federal admiralty case, you have to have a problem about a boat. And, of course, to file federal bankruptcy, you have to have a problem with debt. To take this out of the context of the law, to buy a cake, you don't go to Home Deposition testimony.

It's a major indicia of bad faith and an abuse of this Court that the NRA has no debt problems. In a bankruptcy case, that's actually a shocking fact. Let's look at some of

the evidence on the financial strength of the NRA.

Again, turning to the letter that Mr. LaPierre sent to the members of the NRA and the supporters the same day as the bankruptcy filing on January 15th, 2021, Mr. LaPierre said that the NRA is not bankrupt or going out of business. The NRA is not insolvent. Mr. Frazer, the general counsel, testified that he agreed with those statements and that the NRA had no problem meeting its financial obligations.

This letter to the members in bold print says: "The NRA is financially strong as we have been in years." Mr. Frazer's testimony again agreed that that statement was correct. Mr. LaPierre's testimony showed that the NRA is in the best financial condition it's ever been in. And he also testified that financial conditions are not the reason for filing the bankruptcy case.

Mr. Craig Spray, the CFO who this bankruptcy case was hidden from until after it was filed, testified that the NRA was in a strong financial position as of the filing date. He testified that the NRA was current with all its creditors, never had issues making payroll, didn't have any problems funding benefit plans, and was not in financial crisis. He also testified that there was no financial reason for the NRA or Sea Girt to file bankruptcy.

Going back to the case law, dismissal is warranted when debtors don't have real debt problems, which makes sense

with bankruptcy courts and federal courts being courts of limited jurisdiction. The Investors Group, the Judge Lindsay case that I mentioned earlier, and the SGL Carbon case from the Third Circuit, both stand for that proposition.

In the NRA case, there is no question that the unsecured creditors would have been paid in full or will be paid or would be paid in full in the event of a dismissal. Ironically, Your Honor, the only parties that have been financially hurt by the debtors' decision to file bankruptcy are those unsecured creditors.

The testimony is that there was plenty of cash on hand as of the bankruptcy filing date to pay unsecured creditors in full in the ordinary course of business. Instead of paying those creditors in the ordinary course of business, those creditors were not paid intentionally and now will have to wait rather than being paid in the ordinary course if the NRA had not chosen to withhold those payments and file bankruptcy.

The secured creditor on the headquarters building will not be impacted by a dismissal. There is $20 million in equity in the NRA building in Virginia. I'm not even aware of a single time that the secured lender even appeared at a hearing in this case. How unusual is that?

The assets of the NRA greatly exceed its liabilities, and that is clear from the schedules and statements of affairs

filed by the NRA. The undisputed testimony leads to the inescapable conclusion that the NRA is vastly solvent and that filing bankruptcy with no financial issues or debt problems is an abuse of this court's federal jurisdiction requiring a dismissal of this case.

The third reason to dismiss this case, Your Honor, is that Sea Girt's bankruptcy filing was in bad faith for the sole purpose of impermissible forum shopping for the NRA bankruptcy case. Here we have another independent reason to dismiss the bankruptcy. Sea Girt, LLC, was formed as a Texas LLC on November 24th, 2020. Its formation, Your Honor, is pure forum shopping. It is the foundation piece for the NRA attempting to move to Texas and file bankruptcy.

Sea Girt is the poster child of a bankruptcy filed in bad faith. It has no employees. It has no operations. It has no creditors. It has -- the only asset that it has is $51,000 funded from the Brewer firm's trust account into Sea Girt two days before the bankruptcy filing.

Then, quite shockingly, Your Honor, after the filing of the bankruptcy, according to the monthly operating reports which are on the screen, the money was transferred out of the Sea Girt account without a court order and paid -- and the money was paid to the NRA, its equity owner. This transfer, post-petition transfer of $50,000 without a court order, is a serious violation of Section 363(b) of the Bankruptcy Code

which requires that transactions out of the ordinary course of business have to be approved by the court, which this transaction was not.

The transfers in and then out of Sea Girt positively and conclusively show that the money was not put into the account to pay creditors, to run a business, or for any legitimate purpose. The money was put into Sea Girt account for the sole purpose of pretending, and that's the right word, pretending that Sea Girt has some possible connection to their forum-shopped estate.

The transfer of the money right back out after serving its forum-shopping purpose shows, in addition to violating the Bankruptcy Code, that the whole creation of Sear Girt and the initial deposit of money was nothing more than a ruse and an abuse of this Court and an abuse of the bankruptcy process.

The testimony of the NRA officers show their cavalier and brazen attitude as they made no effort to even hide the fact that they were attempting to forum shop. Mr. LaPierre's words from his testimony were that Sea Girt was formed as a transitional vehicle. The testimony from John Frazer, again who's the general counsel of the NRA, said he did not know of any purpose for forming Sea Girt other than to file NRA's bankruptcy in Texas.

There is no nexus -- there is no other nexus for the

NRA to file bankruptcy in Texas other than Sea Girt's bad-faith formation to create venue. NRA's bankruptcy in Texas is the fruits of the poisoned tree of Sea Girt's bad-faith filing.

Your Honor, a bad-faith bankruptcy paradigm is in the beginning of stages. And I'm going to call this the Boy Scouts paradigm. In the Boy Scouts bankruptcy case, the Boy Scouts had no nexus to Delaware for the filing of bankruptcy. In order to forum shop the Boy Scouts case to Delaware, the Boy Scouts set up an entity to bootstrap the real bankruptcy case into Delaware.

The NRA in this case, Your Honor, filed that Boy Scouts paradigm precisely 100 percent with every single fact to the letter with 100 percent similarity. Here's the Boy Scouts paradigm and you will see that it's exactly the same as what the NRA did in this case.

In both of these cases, both entities created LLCs where their forum shopping took them. Both entities put the same amount to the penny into a bank account -- that being $50,000 into a bank account of the LLC in the forum-shopped estate right before the bankruptcy. Both LLCs carried on no business. Both LLCs had no employees. Both LLCs were pure corporate shells. Both LLCs had no financial problems and no reasons to file a bankruptcy.

In the Boy Scouts case, this paradigm was not challenged and, therefore, the Court never addressed it, it

never made a ruling on it and, therefore, there was no precedent set in the Boy Scouts case.

However, Your Honor, this paradigm is being challenged in this case. The ruling that this Court makes on this issue will undoubtedly become major precedent, especially given the size and importance of this case. If the Court condones the Sea Girt forum shopping to allow the NRA to continue its case in Dallas, Texas, I submit that such a ruling would completely destroy the bankruptcy venue provision of Section 1408 of Title 28 as it would permit any bankruptcy case to be filed in any district with the simple creation of a decoy duck LLC.

A leading bankruptcy professor, that being Adam Levitin, professor of bankruptcy law at Georgetown Law School, wrote an article in Credit Slips dated February 21st, 2020 a little more than a year ago about this Boy Scouts paradigm. Judge, Levitin said: "It's hard to conceive of a more blatant abuse of the venue statute." Mr. -- Professor Levitin went on and called this paradigm the "gaming of the bankruptcy-venue statute."

The Sea Girt venue grab is alone a reason to dismiss the Sea Girt bankruptcy case and the NRA bankruptcy cases both for bad faith. The Sea Girt bankruptcy case in Texas was the sole foundational lynchpin upon which the entire NRA bankruptcy filing in Texas is based. That Sea Girt was forum-shopped,

filed, and used as a tool to forum shop the NRA case is blatant manipulation and abuse of the corporate forum, blatant misuse of bankruptcy law and of this Court, and requires that both cases be dismissed.

The fourth reason for the dismissal of this case, Your Honor, is that the filing of this bankruptcy was not just without board approval but was performed by intentionally deceiving the board of directors of the NRA. Your Honor, it's very clear that board approval is needed under the NRA bylaws to file bankruptcy. The bylaws provide and require that acts of major significance require board approval and cannot be delegated.

Let's look at the testimony. John Frazer, the current general counsel of the NRA, and Judge Journey, a board member, both testified really to the obvious, which is that bankruptcy is an act of major significant. Mr. Frazer went on to actually say that bankruptcy is one of the biggest decisions that a corporation can make. Mr. Frazer also testified that he thinks it would be bad faith for a bankruptcy case to be filed without appropriate authority, which is clearly what happened in this case.

The NRA did not have authority to file this case. Judge Journey testified that authority was not requested of the board and was not given by the board to file bankruptcy. Instead of submitting the board a simple resolution down the

middle of the fairway to approve a bankruptcy filed by an open, honest, frank discussion regarding bankruptcy, the NRA management chose and attempted to obtain board approval by sneaking language in the employment contract of Wayne LaPierre to fool the board of directors into approving the bankruptcy filing.

This language was hidden into the "duties" section of Mr. LaPierre's employment contract which gave Mr. LaPierre the duty "to reorganize or restructure the affairs of the association for purposes of cost minimization, regulatory compliance, or otherwise." At this January 7 board meeting, management was actually successful in sneaking the board approval by the board without a single board member figuring it out.

Again, this is such a horrible fact that it alone cries out for the dismissal of the NRA case for bad faith that rises in this case to the level of actual fraud. Multiple witnesses testified that bankruptcy was not discussed, not even mentioned during this almost one-hour executive session of the board meeting.

Think about how incredible that is, Your Honor. The strategists knew that board approval was needed for filing bankruptcy. For some reason, they wanted to get board approval but decided that they needed to get board approval in a way that the board didn't know it was giving approval. This is as

shocking as it is completely dishonest.

It is nothing less than fraud and recklessly put the NRA in the horrible position that its entire bankruptcy would be questioned, that we would go through a lengthy trial, that the NRA bankruptcy case would be dismissed in bad faith, and that the press reaching the entire country through major news sources would broadcast out the major misdeeds and dishonesty of the NRA.

According to Judge Journey, and this is an interesting fact, Your Honor, only a handful of copies of that employment contract were made available for the 37 board members to crowd around two tables to read. Management was obviously trying to make sure that the board members had as little opportunity to read and digest the reorganization language in the employment contract as possible. They were successful.

The NRA's general counsel, who was present in the executive session of that January 7 board meeting where the employment contract was the sole topic for nearly an hour and who is obviously a lawyer and who had actually read the employment contract, did not in his words "piece together" that the employment contract contemplated a bankruptcy filing.

Judge Journey, a sitting judge and a board member, also read the employment contract completely and was in that meeting and said it didn't even cross his mind that the

employment contract had anything to do with bankruptcy, much less to give board approval to file bankruptcy.

I even noted, Your Honor, that during our trial at the time that Mr. Journey was testifying, Your Honor, said: "Let's take a five-minute break to reorganize." I don't think Your Honor meant let's take a five-minute break for us all to file bankruptcy. Even the reorganization judge uses the words "reorganize" in a non-bankruptcy sense.

Judge Journey testified that the manner in which the approval was obtained is actually a "fraud perpetrated on this court." I agree with this board members's statement. Authority to file bankruptcy is a very serious matter. There is no question that the NRA board was tricked into attempting to delegate authority to file bankruptcy, and that's not just fraud on the board. That's a fraud on this Court.

If the board had been given a straight-up resolution to approve bankruptcy and had voted that resolution down, they would have saved this Court a lengthy trial time and countless additional days that this Court, including three law clerks and three interns and Your Honor and your staff, have spent getting prepared for this trial and the hearings in this case with great disruption to Your Honor's docket.

This fact alone shows without question that this case was filed in bad faith and deserves no better fate than a dismissal with a bad-faith label attached to it. Your Honor,

the motivation that Mr. LaPierre had to hide this bankruptcy filing from the board of directors is answered by Mr. LaPierre's conflicts of interest for that reason to file the bankruptcy of the NRA.

Mr. LaPierre is a personal defendant in the New York case and is being sued for millions of dollars of excess benefits to return that money to the NRA. This provides motivation for Mr. LaPierre to do anything to dump New York, even to file bankruptcy for the NRA.

The NRA points to potential leaks of the board as the reason for keeping the bankruptcy from the board. And, Your Honor, as to leaks, I'm going to say first leaks do not justify hiding a bankruptcy from a board of directors when bylaws require the board of directors to authorize a bankruptcy filing.

Next, Your Honor, the NRA could easily have had a board meeting over a weekend on a Sunday morning, let's say, obtain true bankruptcy authority with honesty and filed bankruptcy on a Sunday afternoon where there would have been no problem with leaks. The NRA has filed -- has three times during the pendency of this case called board meetings on a weekend on two weeks' notice.

So you can't tell me that the NRA doesn't know how to call a Sunday morning board meeting. And the United States Trustee would tell you that Sunday afternoon bankruptcy filings

are not an uncommon occurrence.

The fiasco with this board deceit was so bad that it caused at least one board member, Duane Liptak, to resign. That's New York Attorney General Exhibit 201. Mr. Liptak thought that the board was being deceived.

Let's move to the NRA's attempt to ratify the bankruptcy filing at a post-bankruptcy board meeting on March 28th, 2021. This ratification is, of course, an admission of the failure to properly obtain board approval prior to filing. The board had no choice on March 28th to back Mr. LaPierre and to ratify the bankruptcy proceeding.

The testimony of a long-term NRA member and board member, Owen "Buz" Mills, was that the board at that March 28 meeting was put in a "untenable position when it was asked to ratify bankruptcy."

Importantly, the resolution not only authorizes but directs the officers of the NRA to refile bankruptcy if dismissed and does not limit that instruction to immediately refile to a situation only if the bankruptcy is dismissed for lack of authority.

In other words, Your Honor, if you dismiss this case for bad faith, they are being -- the management is being directed to immediately refile this case I'm guessing somewhere other than here, which causes me to make the request of this Court that not only that this case be dismissed for bad faith

but that it also be dismissed with prejudice to a further refiling for a period of 18 months.

I'm going to now move, Your Honor, to the motion to appoint a trustee. As the Court knows, the trustee's statute, Section 1104(a)(1), provides various cause standards for the appointment of a Chapter 11 trustee. And those cause standards that are delineated in the statute are fraud, dishonesty, gross mismanagement, or incompetence, all which essentially go to the issue of trust where the inquiry is does the Court have the trust in the current NRA management and board of directors or do they need to be displaced with a court-appointed Chapter 11 trustee?

In the Marvel Entertainment case, the Third Circuit Court of Appeals held that upon the finding of cause, the appointment of a trustee is mandatory, but that the determination of cause is within the discretion of Your Honor. The Marvel Entertainment court also held that the list of terms in the statute that constitute cause are not exclusive.

For example, in the Cajun Electric Power case decided by the Fifth Circuit, the Fifth Circuit added to that statutory list of cause for the appointment of a trustee two additional grounds that constitute cause that are certainly highly, highly relevant in this case, and that being conflicts of interest and acrimony in litigation.

I'm going to try to break down the voluminous

testimony in this case on the issue of the trustee to three major categories showing the breakdown of these trust issues in the NRA that cry out for the appointment of a trustee, the first issue being conflicts of interest in the management of the NRA; second issue being issues of lack of oversight both at the board level and at the level of key management; and finally, number three, issues of cause under Section 1104 of fraud, dishonesty, gross mismanagement, and incompetence.

Let's talk first about the conflict-of-issue problems at the NRA, and we'll start with Mr. LaPierre. The facts relating to Mr. LaPierre's conflicts of interest and self-dealing that necessitate the appointment of a trustee go to issues of cause that include gross mismanagement and incompetence and even rise to the level of fraud. The Third Circuit in the Marvel case said that conflicts standing alone can provide sufficient cause for the appointment of a trustee.

The filing of this bankruptcy case shows actions taken by Mr. LaPierre as a seriously conflicted officer of the NRA. These facts I've discussed earlier. Another good example of Mr. LaPierre's conflicts of interest and the resulting breakdown in NRA policies relates to his dealings with an entity called MMP.

The testimony shows that a man named David McKenzie owns various entities which include MMP, Allegiance Creative Group, and Concord Social and Public Relations. Those entities

are getting paid significantly more per month than the contracts support. Specifically, MMP has been paid over $20 million more over the last 36 months than called for in the contracts. Concord has been paid over $8 million more over 36 months than called for in the contracts.

At the same time that these massive overpayments in violation of NRA policy are being paid to the McKenzie entities, McKenzie provides Mr. LaPierre with expensive private vacations on two of his yachts, both yachts which happen to be perfectly named for McKenzie and Mr. LaPierre handle business, the Illusions and the Grand Illusions.

The Illusions represents eight yacht trips to the Bahamas, and the Grand Illusions represents two yacht trips in Europe. These week-long private trips on yachts are straight out of the "Lifestyles of the Rich and Famous" and come complete with fuel, food on the yachts, a chef, and complete crews. In addition to the yacht trips was a lavish vacation to Atlantis and the Bahamas all paid for by Mr. McKenzie.

On top of these consequential conflict issues, Mr. LaPierre has consistently denied in his reporting to the NRA that he has received any gifts in excess of $250 in flagrant disregard of conflict rules of the NRA. Also, Mr. LaPierre has failed to disclose receipt of those sizeable gifts and conflict-of-interest forms as required by the NRA.

We've talked about excess benefit issues as they

relate to Mr. LaPierre. And to fit the pattern and the paradigm of the NRA getting caught and then reacting, the NRA was sued in August of 2020 by the New York Attorney General and it was finally at that time that the excess benefits were disclosed for the first time in years in November of 2020.

This is one of the many examples of the NRA only attempting compliance as a reaction to being forced into compliance. As further violation of the NRA policies, these excess benefits were not properly disclosed to the board or to the audit committee.

Now let's move to and talk about lack of oversight in this case, which is a serious issue when dealing with a trustee request. And first we'll talk about lack of board oversight. Your Honor, nonprofit boards are a little different than profit boards. As the Court knows, the responsibility of a board of directors in a nonprofit is a fundamental legal and public responsibility to provide the oversight and accountability for the organization.

The record in this case is replete with examples of lack of board oversight of Mr. LaPierre that constitute cause under the trustee statute and the Cajun Electric and Marvel Entertainment cases. The inability of the NRA board to provide oversight and/or the conscious indifference of that board to provide oversight go to appointment of a trustee for gross mismanagement.

Your Honor, a case that is very much on point to this case is the Woodlawn Community Development case, which I don't believe is in our brief, but that case is at 6 -- I'm sorry, it is in our brief. That's at 613 B.R. 671. In that case, Woodlawn Community Development Corporation was a nonprofit company that had served a vital public interest and had been around for a long time, much like the NRA, and was forced to file bankruptcy.

Again, much like the NRA, Woodlawn had a leader who was engaged in acts that led a bankruptcy judge after the filing of a motion to appoint a trustee to conclude that the leader was out of control and that board oversight was failing to contain him. The bankruptcy judge ordered the appointment of a trustee and the organization appealed touting great accomplishments and merits of the community organization, much like debtors' counsel did with the first half of his opening argument.

The appellate court disagreed that the bankruptcy judge erred in appointing a trustee. In the following quote, Finney is the leader and the organization is called Woodlawn, the court stated: "Finally, Woodlawn argues that appointing a trustee was the death knell of an old and venerable community organization that benefitted underserved communities. But Finney rang that bell. Woodlawn's management allowed him to operate with virtually limitless discretion and Woodlawn is now

paying the price. The fault lies with management; not with the bankruptcy judge."

Like in the Woodlawn case, the continuing nature of abuses and lack of oversight was an issue before Judge Nelms in the Northern District of Texas in the Life Partners case dealing with a multi-billion dollar public company that was the largest owner of life insurance policies -- settlements in the world.

The appointment of the trustee was requested for past acts dealing with securities law violations of the CEO of the company that had tried to correct itself with the CEO resigning after the bankruptcy filing and shifting the CEO's power over to a compliance-oriented CFO, much like Craig Spray in the NRA case.

I represented the debtor in that case and was on the losing end of that trustee battle. Judge Nelms' ruling in that case dealt with board oversight. He found that even though the bad actor had resigned, the board nevertheless stayed in place and even though the bad actor was gone, the lack of board oversight had created the problem in the first place and the board remained.

As the quote on the screen shows, Judge Nelms said in his ruling, "In short, the evidence is that Ms. Pieper" -- that's the CFO -- "Ms. Pieper may be independent but the board is not and, ultimately, it is the board that runs the company.

Consequently, I find that cause exists to appoint a trustee under Section 1104(a)(1), but I also find that a trustee would best serve the best interest of the creditors, shareholders, and other interests of the estate."

Let's look at what the record in the NRA case shows as to the examples of continuing problems with board oversight. And those examples include the hiding of information from key officers such as the -- unbelievable is the only word I can think of -- the unbelievable fact that the filing of bankruptcy was kept secret from the general counsel and the CFO of the NRA until after they were filed.

And the reason I say the word "unbelievable" is that bankruptcy is a massive legal proceeding, and they kept that legal proceeding from the chief legal officer of the company until after the filing of the case. And I say "unbelievable" because, obviously, the filing of bankruptcy is a massive financial issue dealing with financial problems for a company and they hid and kept the filing of the bankruptcy from the chief financial officer until after it was filed.

Keeping information secret like this necessitates that various rules be violated in the NRA because, for example, if you're going to hide bankruptcy from the general counsel and the CFO, then you also have to hide from the bankruptcy -- you have to hide the bankruptcy lawyer's engagement letter from those individuals which means you have to violate the $100,000

contract policy. And that would have to be violated because showing the bankruptcy lawyer's engagement letter to the general counsel and the CFO who you're trying to hide things from would mean you can't hide from those individuals.

So, Your Honor, it's an example of how dysfunctionality breeds governance problems. This type of example -- these types of examples are replete as a matter of course with the NRA.

And the facts bear out in the testimony that the bankruptcy lawyer's engagement letter was hidden from those individuals and that that clearly violated the $100,000 contract policy of the NRA which would have required Mr. Frazer and Mr. Spray, the general counsel and the CFO, to sign off on those engagements.

Next, the record shows the clear intention to keep the board in the dark in general. The words of Judge Journey, the long-term board -- the long-term member of the NRA and board member, was that the NRA board is a what he called "supine board" with essentially a consent agenda. The record shows that the giving of the Brewer firm a $5 million bankruptcy slush fund with no oversight or no controls over its usage.

They were keeping all of the bankruptcy work hidden from key officers such as Mr. Frazer and Mr. Spray and board members, the effect of which unquestionably presented the

possibility of oversight and violated a number of the NRA's policies.

That slush fund, Your Honor, was just given to Mr. Brewer, and Mr. Brewer was then able to pay lawyers' fees and in fact did pay $1.3 million in bankruptcy legal fees prior to the filing of the bankruptcy case, again, amazingly without the knowledge of the general counsel and without knowledge of the chief financial officer. And ultimately, this shows a lack of board oversight.

And I use the word at the beginning of talking about this that that oversight can be due to inability to provide oversight or a conscious indifference of the board to provide oversight. I think this is an example where the board was unable to have oversight because they basically -- all the information is kept from them.

The record also shows testimony of Carolyn Meadows, a board member and the president of the NRA, admitting that upon finding out that her notes and records could be subpoenaed, she actually destroyed her notes by shredding them and even burning them. And she remains on the company's special litigation committee overseeing litigation, the person that burned her notes fearing subpoenas.

The testimony shows that board oversight is a huge problem. And I'll quote from some testimony. First, the testimony again of Judge Journey, a board member and long-time

historic figure at the NRA, who testified that there are extensive governance abuses at the NRA and that the New York proceeding connected a lot of dots for him relating to those abuses.

Judge Journey also testified that the balance of power and checks and balances at the NRA are essentially non-existence and that the NRA is run as a kingdom, not a corporation, with Wayne LaPierre as the king.

Owen "Buz" Mills, I believe, very credibly testified that the board has abdicated their responsibility and has failed to adequately supervise management.

Rocky Marshall, another board member, testified about his concern about the lack of oversight of the board.

Another issue that's closely related to oversight issues are a troubling set of facts that revolve around what are known at the NRA as "Wayne says" approvals that violate NRA policy. "Wayne says" approvals being acts, whether appropriate under the rules, policies, and bylaws of the NRA or not, are automatically approved because Wayne says.

The following examples of "Wayne says" mentality, these examples continue even after the NRA was allegedly trying to get into compliance. And they include first travel -- first-class air travel of individuals that are not permitted to fly first class, Brewer's firms being paid in disregard of rules and policies because Wayne says.

Another example of "Wayne says" is that there's no board approval of the firing of Craig Spray as required under the bylaws. Tony Makris' testimony calls this management by crisis. Judge Journey called this Wayne's kingdom where Wayne LaPierre is the king.

Your Honor, in November of 2020, Mr. Spray, the CFO who was trying to bring the NRA into compliance, and this is NYAG Exhibit 278 on the screen, he wrote an email to Mr. Frazer, the general counsel, saying: "You know as well as I do that these are not approvals. There are no 'Wayne said' approvals at the NRA. All of you are core to our controls process and, quite frankly, I am disappointed in all of you." He closes with: "I can't emphasize enough what a breakdown this is." What happens to Mr. Spray? Of course, he gets fired by Wayne LaPierre.

Another telling example is that Wayne LaPierre never attended any of the compliance presentations that the NRA set up to try to get back into compliance. Mr. LaPierre is not even interested in appearing to be compliant to the duties of a nonprofit organization. Basically, Mr. LaPierre does what Mr. LaPierre wants to do.

This mentality, Your Honor, is something that you actually observed yourself. This mentality is consistent with his inability to answer simple "yes" or "no" questions, and continuing instructions over and over from this Court and even

his own attorney showing that he absolutely cannot follow directions.

This is consistent not only with not following bylaws, taking massive excessive benefits and dealing with Craig Spray trying to make meaningful changes in the NRA by firing him. In Wayne LaPierre's testimony, objections to non-responsiveness were sustained over 60 times.

This Court admonished Mr. LaPierre 16 times to just listen to the question and answer the questions, even making sure at one point that Mr. LaPierre could actually hear the Court's instructions. Mr. LaPierre's own counsel had to admonish his own client, Mr. LaPierre, five times to just listen to the question and answer them.

Now let's talk about some lack of oversight issues regarding the Brewer firm that are very important in this case. Your Honor, every dysfunctional company has within it a person who the late great Christopher Wiehl (phonetic) used to call the organizational evil.

In the NRA, we can see the impact of Bill Brewer and the Brewer firm on the demise of the functionality of the NRA and the failure to contain those actions. The issues relating to the Brewer firm are shocking and show complete breakdown in oversight at the NRA. They go both to the standards of gross mismanagement and to the case-law standard of acrimony in litigation that comes both from the Cajun Electric case in the

Fifth Circuit and the Marvel Entertainment case from the Third Circuit.

The first Brewer law firm issue is the absolute exponential expansion of legal fees of the NRA since the hiring of the Brewer firm in March of 2018. The chart shows what I'm about to tell the Court as far as some numbers here. The 2016 990 shows legal fees and this is before Mr. Brewer's firm's hired -- show total legal fees of the NRA at $6.5 million. In 2017, the 990 shows that the total legal fees are similar at $6.9 million.

In 2019, things start changing and that's when Mr. Brewer's firm is hired in March of that year. In the last nine months after the Brewer firm is hired, the legal fees go up from their normal 6.9-, 6.5-million-dollar number to 13.8 million. And since he was hired only in March, that annualizes to $18.4 million. That's a 267-percent increase in legal fees when the Brewer firm is hired.

Then in 2019, Your Honor, the 990s shows $24.8 million in legal fees, which is a 360-percent increase from 2017 before the Brewer firm is hired. In 2020, those legal fees jump up to $34 million to the Brewer firm in fees. That's a 492-percent increase from 2017 before the Brewer firm was hired.

Those three numbers for those three years add up to $72.6 million being paid to the Brewer firm over three years.

17.5 million of that 72 million was paid just in the 90 days prior to bankruptcy, which would annualize out to $70 million a year in legal fees.

To put the Brewer firm's three years' worth of fees of $72.6 million collected over a three-year period into perspective, Your Honor, that's more than the amount of the value of the NRA 305,000 square-foot corporate headquarters building in Virginia.

To put that $72-million number into further perspective, to generate $72.6 million to pay Brewer fees over three years is equivalent at $45 a year membership dues of the NRA to 1.6 NRA member -- 1.6 million NRA members' annual dues, which are going to the Brewer firm rather than going to what debtors' counsel referred to in his opening statement as all the great programs and missions of the NRA.

Oliver North, who was president of the NRA in 2019, voiced concerns about the Brewer fees repeatedly. And what happens to him? He's pushed out of the NRA, much like Mr. Spray. Oliver North wrote a letter dated April 18th, 2019, and that's Ackerman's Exhibit Number 38, which says that the Brewer fees "pose an existential threat to the financial stability of the NRA."

The Oliver North letter went on to say: "It cries out for outside independent review." Colonel North also raised issues relating to troubling unethical conduct of Brewer found

by various judges that's discussed in that letter.

The second Brewer firm issue that goes to the standard of acrimonious litigation under the case law and lack of oversight and gross mismanagement is that the board failed to control out-of-control litigation that has developed since the Brewer firm took hold of the NRA in 2018. And, again, all of this is after the NRA claims to be in "self-correction mode."

One gross example of this, Your Honor, is the Cox litigation. The Cox litigation is litigation attempting to block $2 million worth of contractual entitlement to Mr. Cox so it's a $2-million issue that is -- and in that case, Your Honor, the evidence shows that $6 million has been paid to Brewer to chase this $2 million.

Additionally, there's an advancement of indemnification provision in Cox's agreement that require prepayment of his attorneys' fees. So not only has the NRA paid $6 million in legal fees on the Cox litigation, but it's also had to pay $1.8 million to Winston & Strawn which is Cox lawyers because of that provision.

So a total of $7.8 million and counting to eliminate a $2-million contractual obligation and a "Hail Mary pass" for additional speculative damages, and the arbitration hasn't even happened yet. The facts show that legal fees that are multiples of the amount in controversy show a complete lack of

oversight and out-of-control litigation that goes way beyond mismanagement.

Your Honor, the New York regulatory case is another example and suffice it to say that millions of dollars of Brewer fees are being spent rather than just taking serious compliance -- taking compliance seriously and making real changes at the NRA.

What is clear from these Brewer facts? One, nobody is acting as a check to Brewer's power and influence. And, two, Brewer's effective takeover of control of the NRA, this fact and the resulting attorneys'-fees insanity that has been experienced by the NRA with alarming escalation since the engagement of Brewer, screams out for the appointment of a trustee.

And, finally, Your Honor, issues of cause under statute for fraud, dishonesty, gross mismanagement, and incompetence. The first one I would like to address is the actual filing of this bankruptcy case. The fact that this case was filed at all is a highly problematic issue that goes strongly in favor of the appointment of a trustee for incompetence and gross mismanagement.

The facts of dishonesty surrounding the filing of the case, which I handled earlier dealing with board approval, go to fraud and dishonesty. Those facts earlier discussed apply to the requirements of the appointment of a trustee every bit

as much as they do to show the case was filed in bad faith for purposes of dismissal.

But the actual fact of putting this 150-year-old charity into bankruptcy at all goes to the gross mismanagement and competence issues. First, let's recall the words of debtors' counsel said in the opening statement in this case, that -- I'm sorry, not said in the opening statement, said in open court during this case, that being that the dismissal -- that this dismissal-trustee proceeding could end the existence of the NRA.

That statement was obviously meant to give this Court pause to rule against the NRA, but the concept that the current proceedings before this Court could end the NRA itself is a major indictment against the NRA for taking the monumental risk in this filing to begin with. Why? Because the filing of these motions to dismiss and appoint a trustee were easily foreseeable and should have been completely anticipated.

The filing facts, including the financial strength of the NRA, the clear litigation strategy, purpose of the filing of this bankruptcy, the bad-faith forum shopping of this case, using an entity created solely for the purpose of forum shopping, there is no question that a filing for a motion for dismissal of this case or appointment of a trustee was going to be filed and clearly should have been anticipated.

And at the risk of losing one of those motions would

be likely, highly likely, the filing of this bankruptcy case and the endangering of its existence according to debtors' counsel, as he suggested, could be a result of losing the motions to dismiss, appoint a trustee. And therefore, the risk to the charity, the risk to its programs and mission, the risk to its members, the risk to its donors is nothing less than gross mismanagement and incompetence as contemplated under Section 1104.

Your Honor, I'm going to briefly go through some actions that were taken in early May of 2018 after the NRA claims to be on a course correction. And those facts show that in April of 2018, one month after the NRA started its purported course correction, Wayne LaPierre went to Dallas to shop for a house that was to be secretly paid for by the NRA. Weeks later on May 5th, 2018, the NRA executed a poison-pill contract that would pay Wayne LaPierre $17 million regardless of whether he was fired.

On the same day, May 5th, the NRA's outgoing president, Pete Brownell, signed a consulting agreement for the CFO, Woody Phillips, who apparently was not up to the task that would pay him $30,000 a month after he resigned.

Importantly, both of those contracts were signed by Carolyn Meadows. This is the same Carolyn Meadows that is the current NRA's president, the same Carolyn Meadows that formed the special litigation committee that consented to this

bankruptcy filing and purportedly acts as a check on Wayne LaPierre's power as she, in her own words, burns her own notes.

Two weeks after that, the NRA formed an entity called WBB, LLC, to facilitate the secret purchase of the house, an entity in which Woody Phillips who had just received a lucrative consulting contract authorized $70,000 to be paid to fund that entity.

The fact that NRA ultimately did not go through with that purchase does not magically cleanse the fact that WBB entity was set up and funded and a real attempts was pursued to find and purchase a $6-million home for Mr. LaPierre to be paid for by the NRA in secret, all after the NRA claims it's on its way to a course correction. These facts clearly show fraud and dishonesty under the statute.

Your Honor, I'll save for rebuttal some facts I want to talk to the Court about regarding Craig Spray who is the person that was trying to make positive changes of compliance in the NRA, but the long story short is that he attempted this compliance in a serious and sincere manner and ended up being fired by Wayne LaPierre without board approval.

The CRO application is going to be discussed by the United States trustee, so the only mention that I want to make of it, Your Honor, is that the CRO application -- and this is completely no disparagement on the CRO who is a well-respected individual in Dallas, but the application and the way that the

CRO was attempted to be employed is a microcosm of the dysfunction in the NRA's management. The United States Trustee will be discussing this application.

But, in sum, Your Honor, after hearing the testimony, my conclusion of the CRO application is that it appears to be merely a transparent attempt to lend the very good name and reputation of the CRO to the NRA and to brand their plan with the CRO's good name in return for a $1-million success fee.

So, in closing and conclusion, Your Honor, I'm going to end with what the NRA began this trial with which was debtors' counsel's opening statement. I was listening intently as to how the NRA would handle their biggest problem in this case which was that it was filed by an entity that is in the best financial condition in its history, has no creditor issues, was filed as pure litigation strategy in a fabricated venue.

I can't imagine worse facts. Instead of trying to argue or disagree with these factual premises, which we were listening for, the NRA instead through debtors' counsel's opening and through its own witnesses' testimony embraced those facts and premises and admitted that the sole reason of the filing of bankruptcy was to gain this strategic litigation through "dumping New York."

The twist upon which they hung their hat was that the New York proceeding had been -- had the possibly outcome of

dissolution which debtors' counsel likened to a foreclosure. If it's okay to file bankruptcy to stop a foreclosure, then it must be okay to file a bankruptcy to stop a dissolution.

In fact, Your Honor, those two situations are completely different. Where a company files bankruptcy to stop a foreclosure and has creditors that will be impacted by the foreclosure of a major piece of collateral which that entity needs to conduct business and pay its creditors, the bankruptcy is completely aligned with the purposes of bankruptcy, that being to stave off a secured creditor who the Bankruptcy Code ensures will be adequately protected, preserve the value of the assets, and maximize the payout to unsecured creditors.

In the NRA case, the situation is completely different. In this case, there are no creditors who will not get paid in full. That is a game-changing difference. Under New York law in a dissolution proceeding, like in this bankruptcy case, creditors are paid off the top and any excess funds are paid as determined by order of the Court, not at the choice of the New York Attorney General but as determined and ordered by the Court.

Under the facts of this case, the assets vastly exceed the debts. The unsecured creditors would be paid in full in the dissolution, and the secured creditor with $20 million plus in equity in his collateral would also be paid in full. Dissolution would pay all creditors in full, and the New

York court would have taken care of and fully satisfied with the bankruptcy court can and should do on its best day.

However, the debtors' counsel did not stop with the payment of his creditors. Instead, he gave a lengthy presentation on the activities, programs, and members of the NRA, much as debtors' counsel did in the Woodlawn Community case cited earlier.

Bringing debtors' counsel opening thoughts back to the potential dismissal of this case and the resulting possibility that the NRA should be dissolved, I submit to you that because the creditors would be paid in full and because the members of the NRA are not shareholders or otherwise equity owners, the right court to hear the debtors' counsel presentation regarding the activities, programs, and members of the NRA is not the court that set up to solve debt problems of which the NRA has none.

The right court to make those determinations, the right court to weigh the great activities and programs against wrongful governance, the right court to weigh interests of members against wrongful acts of management is the court that the New York legislature has entrusted that weighing to, which is the state court in which the NRA chose to be incorporated -- not the creditor court but instead the public-interest court, not the court that the NRA forum-shopped its way into with a clearly manipulated, fabricated bad-faith venue.

Your Honor, this case must be dismissed. It must be dismissed to allow the right decisions to be made by the right courts, courts that Mr. LaPierre had to admit to you were fair courts that are not corrupt. Those are the courts that should be hearing about the activities and the programs of the NRA, the welfare of its members, the purpose of its mission and the necessary interplay of New York law is that the police and regulatory power of the State of New York with the purposes of protecting the interests of the public.

The Fifth Circuit has told us in cases like Halo Wireless that those police and regulatory powers trump the interests of the bankruptcy law even when there are creditors that won't get paid in full. In this case, the lack of insolvency takes this case to a new level where this Court is serving no function other than to provide an impermissible block to the New York court system and the New York statutes designed to protect the public interest.

It is very clear, Your Honor, that this case was filed in the most -- utmost bad faith, has no legitimate purpose, and must be dismissed. Thank you.

THE COURT: Thank you, Mr. Pronske. I show you have just short of 20 minutes left.

MR. GARMAN: Your Honor, this is Greg Garman. Might I ask a point of clarification?

THE COURT: Sure.

MR. GARMAN: Mr. Pronske indicated that he was going to reserve an argument related to Craig Spray for his rebuttal. That would deny me the ability to respond to an argument I understand is going to be advanced. If there is going to be an argument about Mr. Spray, I do believe it needs to come now, not in rebuttal so that I might properly respond.

THE COURT: Mr. Pronske, you want to respond to that?

MR. PRONSKE: Your Honor, yes, I'll reserve any rebuttal that I have to rebutting whatever he says about Mr. Spray. In other words, it will be appropriate rebuttal.

THE COURT: And that would count to anybody that gets the last word on the movants' side that you can't spring anything new.

All right. Ackerman -- I think we'll go through Ackerman's first round of closing argument, and then we'll take a short recess before we move into Journey then.

So I'm not sure who's going to argue for Ackerman.

MR. MASON: Good morning, Your Honor. Brian Mason.

THE COURT: And, Mr. Mason, before we start, my understanding is you want about an hour and ten in this first pass; is that right?

MR. MASON: That is correct, Your Honor.

THE COURT: All right. You may proceed.

MR. MASON: Your Honor, on behalf of Ackerman McQueen and its legal team, we appreciate your patience with us and

your attention to this most important case.

Like a stone tossed into a tranquil lake, the ruling in this case will have ripples which extend from coast to coast. And while there's been a great deal of time spent in this courtroom making a record, we believe that the decision to dismiss this bankruptcy is straightforward and overwhelmingly supported by the evidence. To assist the Court, I'd like to highlight what we believe supports the inevitable conclusion that this bankruptcy must be dismissed with prejudice.

Mr. Pronske spent a fair amount of time talking about the standard for dismissal that's applicable here. And I'm going to do my best to not repeat what he has said, but I do want to highlight some standards that this Court is very much aware of with respect to the dismissal standard at issue here.

Your Honor, this bankruptcy was filed in bad faith and should be dismissed for two independently sufficient reasons. Number one, the NRA did not file this bankruptcy for a valid reorganizational purpose as required under black-letter bankruptcy law. And number two, this was a fraudulent bankruptcy. As Judge Journey put it, this was a fraud on this Court.

For starters, I'd like to talk a little bit about one of the fundamental issues with most debtors in Chapter 11 bankruptcies. I know Mr. Pronske touched on this, but one of the things that I told the Court in opening that we were going

to see during this trial was an overwhelming amount of evidence that the NRA is financially healthy and that its finances had absolutely nothing to do with this bankruptcy filing.

And as you can see, this is just a snapshot of the testimony that we saw throughout this trial. It's exactly what the evidence has shown. It is an undisputed fact that the NRA's financial situation had nothing to do with the filing of this bankruptcy. Unlike the vast majority of entities trying to seek shelter in bankruptcy, there is no distress, there's no solvency issues here.

This Court heard testimony from virtually every NRA witness in this trial, including Mr. LaPierre, Mr. Frazer, Mr. Spray, Mr. Cotton, Ms. Rowling and others that the NRA is financially healthy as ever and that its finances had nothing to do with this bankruptcy. The latest operating statements from the NRA bankruptcy disclosures make it clear that there is approximately $72 million of available cash for the NRA.

Proudly proclaiming their financial situation just like in SGL Carbon, the NRA boldly told the world in public statements on the very day that they filed this bankruptcy that it was as financially as strong as ever and that it could continue business as usual, despite the bankruptcy, everything that goes along with it.

In Cedar Shore Resort, the Eighth Circuit made clear that Chapter 11 bankruptcy was created by Congress as a vehicle

for businesses on the verge of a fatal financial plummet, not for a profitable business to evade liability and gain the bankruptcy system like the NRA is trying to do here with this Court.

Given that the NRA is solvent and its finances had nothing to do with this bankruptcy, why did it file? Well, we heard a little bit of evidence throughout this trial that the NRA wanted to try and centralize litigation. The intent -- here Mr. Frazer testified that one of the reasons the NRA filed was to streamline and consolidate litigation.

But Mr. LaPierre testified that absent the New York Attorney General enforcement action, its other litigation would not be a reason to file for bankruptcy. Both Ms. Rowling and Mr. Spray, financial arms of the NRA, testified that the NRA could afford to defend and prosecute litigation, especially the litigation that the NRA has commenced.

At the first-day hearings, Mr. Neligan represented to this Court that the NRA had attempted to consolidate litigation through the MDL and that when it failed, the option of bankruptcy was more of a necessity because of the amount of litigation. Death by a thousand cuts, I believe were Mr. Neligan's words.

Importantly, the MDL was not even decided as of the petition date on January 15th. Mr. Frazer testified that the MDL was asked by the NRA to look at centralization and

consolidation of its litigation. And on February 4th, 2021, the MDL panel found that they were not persuaded that centralization is necessary for the convenience of the parties and witnesses or to further the just and efficient conduct of this litigation.

In other words, the MDL panel considered thousands of pages of briefing and evidence, oral argument, and came to the conclusion that the reason Mr. Frazer attempted to articulate as one of the NRA's reasons for filing for bankruptcy was not a valid basis for consolidation or centralization. This MDL just like this bankruptcy conceived by Mr. LaPierre, the Brewer firm, the special litigation committee, is now another part of the NRA's litigation tactic, to try to obtain an advantage in another forum and exert leverage on the New York Attorney General and other litigants like Ackerman McQueen.

So if the NRA didn't file for bankruptcy because of solvency concerns or it's a centralized litigation, what else is there? In his opening statement, Mr. Garman stated that there was three reasons the NRA filed this bankruptcy: Take dissolution off the table, take receivership off th table, and get out of New York.

Mr. Garman further analogized the NRA's situation to a foreclosure. As Mr. Garman said, it's bankruptcy 101 that you file because you have a foreclosure in place or a judgment is headed your way or a receivership is in the works. Here

there's not even a trial setting. There is absolutely no evidence of all of a dissolution judgment headed towards the NRA.

Mr. Frazer testified that a trial and appeal on the New York AG enforcement action could be years away. Mr. LaPierre and Judge Journey testified to the same. Even the proposed CRO, Mr. Robichaux could not tell the Court whether a judgment was close and whether the threat of involuntary dissolution is currently jeopardizing the NRA.

This whole idea of comparing the NRA's situation to a foreclosure makes no sense. In a foreclosure, there is one party that can secretly file its own. That is not the case here. The New York Attorney General cannot cause this dissolution on its own. It requires an independent judicial finding in the Court's sole discretion at the conclusion of the evidence that the equitable remedy of involuntary dissolution is in the best interest of the public.

This whole idea of a receiver and the imminency or the thought of a receiver is also a completely made-up idea. First and foremost, the New York Attorney General has not even requested the appointment of a receiver. Second, there's no evidence of any threat, imminent or otherwise, of a receiver being appointed. This was confirmed throughout the trial by both Mr. Frazer and Mr. LaPierre and others.

In reality, the closest thing the NRA has to a

receiver is the appointment of a Chapter 11 trustee if this case does not get dismissed. And to be absolutely clear, if a Chapter 11 trustee is appointed, then the people that chose to file this bankruptcy -- Mr. LaPierre, the Brewer firm, the special litigation committee -- be can the ones to blame for putting the NRA in this situation.

The NRA members can hold them accountable because there was absolutely no legitimate good-faith purpose for filing this bankruptcy and putting the NRA in this position.

Both prior to and during this case, Mr. LaPierre and the NRA have slandered and libeled the entire State of New York, its public officials, political officeholders, and overbroadly even its courts. Mr. LaPierre initially admitted that when the NRA said that all things they said about public officials, he knew that that could be interpreted to mean judges also. As we will see, he later backed off those comments and made it clear that the NRA is not accusing the New York Judiciary of any wrongdoing or bias.

These statements made about New York and its officials are numerous and, frankly, reprehensible. But importantly, it's all a bunch of political public relations noise. The NRA cares more about how they're portrayed to the public than fighting for the Second Amendment.

Regardless of the outlandish claims the NRA wants to make about New York, it cannot change the simple fact that the

New York Attorney General does not have the power or authority to dissolve the NRA. Mr. Frazer testified that the NRA has due process rights, that there is a judicial process involving a state court judge.

Mr. LaPierre also testified that the New York Attorney General cannot unilaterally dissolve the NRA, it takes a court, and that any judgment is subject to an appeal. Judge Journey testified to the same thing.

Even the New York Attorney General makes this same point in her prayer for relief, expressly acknowledging in the complaint that was filed against New York that dissolution would be in the Court's discretion if it's determined to be in the interest of the public. And I know Mr. Pronske showed the Court this same statute earlier with respect to the idea of dissolution and how there ultimately has to be a determination that it is in the public's best interest.

But part of the problem with the NRA's entire argument about a weaponized New York Attorney General is that the New York Attorney General doesn't have a weapon to dissolve the NRA. All of the Court's questions bear within the seeds of the problems with the NRA's bankruptcy filing. The grave threat that it waves about to draw the attention of the Court is a phantom.

There is no boogeyman or boogey attorney general. There are only state and federal courts with two levels of

appeals above each. These courts are all available to the NRA because of its vast litigation war chest that the Brewer firms had no problem tapping into the last few years.

Understanding that the New York Attorney General cannot unilaterally dissolve the NRA, we asked John Frazer, the NRA's general counsel, to confirm that dissolution is in fact nothing like foreclosure. As you could see here, Mr. Frazer didn't even understand the comparison that Mr. Garman attempted to make in his opening. Hopefully, Mr. Frazer now understands that a dissolution requires a court process overseen by a judge who is ultimately going to make that determination.

Here the judges that we've been talking about who are overseeing this dissolution issue, the ones who should decide whether dissolution is in the best interest of the public, the ones that the NRA is asking this Court to simply ignore, Judge Joel Cohen, there's been a lot of testimony about Judge Cohen in this trial. The state court judge presiding over the New York enforcement action who, by the way, also presided over the NRA's claim against Colonel North regarding an indemnity issue and who ruled in the NRA's favor.

One of the burning questions here is that the NRA claims they've spent the last two and a half years, tens of millions of dollars solving any problems under New York nonprofit law. Did they not have faith in all the changes that they've made?

Mr. LaPierre testified that the NRA is now in compliance. Every chance they got throughout this trial, they were trying to talk about the wonderful self-correction, the course correction. Why is the NRA so afraid of having Judge Cohen listen to all of the evidence, listen to the years of self-correction, and then make a final decision of whether the equitable remedy of involuntary dissolution is in the best interest of the public.

If this case is dismissed, the NRA's going back to New York to continue to defend themselves in the state court action. They're swimming in cash. They've got remedies in federal court and in state court.

The NRA has attempted to create the illusion that the complaint filed by the New York Attorney General seeking different requests for relief, one of which is dissolution, has created an immediate, urgent, and catastrophic threat to the NRA. Nothing could be further from the truth. There was absolutely no testimony of any immediate, urgent, catastrophic threat. And three of the key NRA witnesses throughout this trial made clear that the NRA can get a fair shake in New York.

Mr. LaPierre acknowledged that the New York courts were not corrupt or that they did not present an uneven playing field. He testified that the courts and not the New York Attorney General have control over the ultimate outcome, that there's levels of appeal above a trial court, that there's no

trial date that's imminent, and any potential final judgment can be appealed.

The NRA filed in federal court an action to try and protect their constitutional rights and take dissolution off the table. Mr. Frazer acknowledged that the courts of New York are not corrupt. He testified that the courts are going to decide the ultimate outcome of dissolution or receivership, there's no trial setting and, again, that the NRA has exercised their rights and sought relief in the federal courts in New York. Mr. Frazer also testified that there's different levels of appeal even up to the U.S. Supreme Court.

Colonel Lee, the second vice-president of the NRA and member of the special litigation committee, testified that Judge Joel Cohen could be fair and impartial, the NRA cannot unilaterally dissolve the NRA, and that the NRA has due process rights. Judge Journey -- I'm sorry, Colonel Lee also talked about the various appellate remedies at the NRA's disposal if there's ultimately an unfavorable finding up in the New York Attorney enforcement action.

Judge Journey had a number of insights on the fact that dissolution would be accomplished by a court and not be a regulatory agency and that the court in the appellate process would take an extensive amount of time. He also testified that he knows of no reasons why the courts of New York would be biased or unable to present a level playing field, that they're

not actually weaponized against the NRA.

I want to talk a little bit more about what's going on in the New York federal court action. There's been some discussion about it, but I think it's important to emphasize the specific relief that the NRA is requesting in the federal courts up in New York.

In addition to having their due process rights and defending themselves in the action before Judge Cohen, the NRA filed a lawsuit in federal court in New York. And as part of the relief they're seeking, they're asking for an injunction to stop the New York Attorney General enforcement action and take the request of dissolution off the table. If this case is dismissed, the NRA can continue to exercise those rights.

The fact of the matter is this federal New York action is another insurance policy that the NRA has taken out. And they are exercising their rights in two different forums up in New York. There does not need to be a third. This Court is not the appropriate court to determine whether dissolution is appropriate.

Mr. Frazer testified that -- on that same point that the NRA has sought the protection of the federal district courts in New York and that that is specifically designed to impact the relief sought by the New York Attorney General and the enforcement action.

So why are we really here? New York -- as Mr.

Pronske stated, the NRA is double-bound. This is all about New York. Mr. Cotton testified on the morning of April 6th that the NRA has been contemplating leaving New York for at least 15 years. Mr. LaPierre even testified that this has been under construction for a while as officials from various states have approached the NRA.

Why now? Mr. Pronske briefly talked about some of his testimony, but I want to highlight it because these next two slides include some of the most important testimony that the Court heard in this trial. And that is because Mr. LaPierre acknowledged that if you take the New York Attorney General enforcement action off the table, the NRA doesn't file for bankruptcy. In other words, but for the enforcement action, none of us are here right now.

Here, Mr. LaPierre specifically acknowledged that solvency in the other litigation, the Ackerman litigation, the Under Wild Skies litigation, the Chris Cox arbitration, were not issues that require the NRA to file for bankruptcy. In other words, Mr. Frazer's testimony at the beginning of this trial that one of the purposes was to somehow consolidate or streamline litigation, that's not why we're here. That's not why the NRA sought the Chapter 11 protection.

So why is all that important? The litigation advantage that the NRA is seeking here is to take dissolution off the table. By allowing this case to go forward, Your

Honor, you're taking the relief off the table in the State of New York, moving that relief and taking that determination away from Judge Cohen to decide the issues based on the entire merits of that case. To a large extent, you'd be doing the same thing to the federal judge overseeing the NRA's constitutional rights in the federal lawsuit.

In short, I would submit that you're saying the NRA wins in the First Amendment lawsuit that they filed against Letitia James by granting them the relief that they're seeking here and taking dissolution off the table. Plain and simple, bankruptcies cannot be used as litigation tactics, and that is exactly what the NRA has admitted in this case. Mr. Garman talked about it in his opening. You heard tons of evidence throughout this trial, and I expect that's exactly what you're going to hear from him again when he gets up here this afternoon.

What's really funny is if you think about it, the whole notion that a special litigation committee and not the financial people at the NRA or the CFO decided to file bankruptcy should send a huge red flag that the purpose of this bankruptcy was to obtain a litigation advantage.

Mr. Pronske talked about various cases that have been cited in both of our briefs, and I won't go through all of these cases. But we did highlight some of these for the Court. And if it's okay with Your Honor, we would like to provide the

Court with a copy of this PowerPoint at the conclusion and we can highlight some of these cases.

But I'm going to flip through some of these because I don't want to be repetitive of Mr. Pronske. One case that I'm sure that Mr. Pronske did discuss and maybe I missed it, so I apologize if I did, was the In re Alexander Trust case. And in that case, Judge Houser found that obtaining a more convenient forum in litigation standing alone is not a good faith reason for filing a bankruptcy petition. So here the NRA creates a sham company, Sea Girt, solely as a transitional vehicle to get this case in Texas, which is not good faith.

The bankruptcy court in that case also found it wouldn't be able to decide much of the litigation involving state law rights among non-debtor parties. And in that case, the court relied on the Supreme Court precedent in Stern v. Marshall. Judge Houser also found that the litigation tactic in that case that was based on the fact that the bankruptcy filing was timed to events in litigation. Here the NRA talked about leaving New York for 15 years, but it wasn't until the New York Attorney General filed a lawsuit in April of 2020 that the NRA actually started moving.

We heard testimony that starting in September of 2020, it formed the special litigation committee. They hired or they had the Brewer firm beginning bankruptcy-related work. They hired bankruptcy counsel. And then on January 15th, they

filed. Just like the filing in Alexander Trust was a bad-faith litigation tactic, so too is this bankruptcy.

Mr. Garman spent a lot of time talking about the matter of Halo Energy [sic]. I'm not going to repeat that. I did want to provide the Court with a citation to that case if it doesn't have it. It's -- for the record, it's 684 F.3d 581.

As I mentioned at the outset, there's two reasons why we think this bankruptcy should be dismissed, that it was not a good-faith filing. The second reason that we believe that this bankruptcy should be dismissed is because it was a fraudulent bankruptcy filing. It was not authorized by the board of directors.

The laughable attempt at authorization of this Chapter 11 petition was the result of an elaborate cynical scheme which began with the NRA's lawyer, Bill Brewer, working with his ex-partner purportedly representing Mr. LaPierre to prepare an employment agreement for the executive vice-president. You heard testimony that in Mr. LaPierre's approximate 30 years of being at the NRA, his employment agreement has never before been presented to the board.

The blatantly obvious purpose of the employment agreement being presented to the board at the closed session on January 7th was to have some language to point out to try and authorize Mr. LaPierre to file for Chapter 11 bankruptcy. The problem for the NRA, Mr. LaPierre, and their lawyers is that

they did it all wrong.

Again, Mr. Pronske talked about this briefly, so I will just briefly touch on it. But according to the NRA's bylaws, the NRA's executive committee is not permitted to authorize the filing of bankruptcy. The bylaws make clear that there are certain powers that are reserved exclusively for the board. Two of those provisions that we've heard plenty of evidence are at issue here: present a petition for judicial dissolution, adopt a plan for merger consolidation or non-judicial dissolution, formulate a plan or perform corporate activities of the association of such major significance.

Your Honor, they pointed to all of these documents throughout this trial that supposedly show that there was this corporate authority to file this bankruptcy. But really they just pointed to a bunch of bricks and they're trying to call it a house. No, these documents are sufficient individually or collectively to overcome the plain language of the bylaws which clearly require full board approval for such a significant decision as the filing for bankruptcy of a nonprofit organization that has been around for 150 years.

Mr. Frazer, Mr. LaPierre, and Mr. Cotton and others all testified and acknowledge the obvious. This was a major decision. This is an undisputed fact. So if the executive committee can't approve the bankruptcy filing, what about the special litigation committee?

The NRA contends that the special litigation committee approved and authorized the filing of this bankruptcy. Again, the bylaws make clear because the executive committee cannot file or authorize bankruptcy, neither can a special committee, like the special litigation committee in this particular case.

Mr. LaPierre, Mr. LaPierre also did not have the power or authority to authorize the filing of this bankruptcy. The bylaws specifically set out Mr. LaPierre's role and powers and duties with respect to the National Rifle Association. Nowhere in there is there any authority to file or authorize a bankruptcy filing.

Numerous witnesses throughout the trial also testified that Mr. LaPierre's employment agreement that we've talked so much about did not amend or change the NRA's bylaws. So how did they do it? How did they come up with this I don't even want to call it elaborate, but this scheme to defraud the board, to defraud all of us?

This is a snapshot of the board minutes from the January 6th executive session of the Officers Compensation Committee that talks about the employment agreement that was drafted by NRA's counsel and Mr. LaPierre's counsel, Kent Correl, Mr. Brewer's former partner. And here, we know that those two individuals got together, conspired with Mr. LaPierre to hide and slip that language into Mr. LaPierre's employment

agreement and make it so ambiguous that it wouldn't catch the board's attention at the January 7 meeting.

There's no reason why -- Mr. Pronske said there's no reason why the NRA could not have had a board meeting and talked about this. There's just not. This whole idea of (indiscernible) receivership, it's a fallacy. They could have done it, and instead they chose to be deceptive about it. They chose to be fraudulent. They chose to deceive the board.

Mr. LaPierre repeatedly stated during his testimony that he would have never filed for bankruptcy if he didn't have the comfort of the reorganized language buried in the middle of the long and convoluted sentence of his employment agreement. Mr. Frazer testified that reorganize and reincorporate can have a variety of reasons, not just bankruptcy. Many other witnesses said the same thing.

Here, Mr. Frazer testified that the language in Mr. LaPierre's employment agreement was not discussed at the January 7 meeting. Mr. LaPierre's counsel, the Brewer firm, and special litigation committee did not explain that the following language, "reorganize or restructure the affairs of the association for purposes of cost minimization, regulatory compliance, or otherwise" was going to provide Mr. LaPierre with the purported authority to file bankruptcy.

Mr. LaPierre and others in on this fraud repeatedly said that the board of directors could have asked any questions

they wanted. You guys figure it out. It's on you if you don't understand what that means. Come on; that's ridiculous. It's hard to decide what's more aggravating here that the band of conspirators thought that they were so clever or the fact that they thought we were all so incredibly stupid.

Judge Journey was shocked at the filing of this bankruptcy because the attorneys at the January 7 meeting breached their duties to the board. Judge Journey made clear, and other board members, that there was nothing in the employment agreement, no actions at that board meeting that gave them any inkling that Wayne LaPierre may try and put the NRA into bankruptcy in a couple of weeks.

I think it's important here that the NRA produced a number of witnesses throughout this trial, a number of board members. And other than confirming the complete dysfunction of the NRA board and management, it's notable of the absence of any testimony from any board member that was at that meeting that said, yeah, I knew what that meant. Of course, it was obvious. There was none of that, Your Honor.

That's because they intentionally deceived the board, and none of those board members would have thought that that language would have provided their purported authorization to file bankruptcy.

Mr. Frazer, the NRA's general counsel, he knew that there was bankruptcy-related research going on. He knew that

the employment agreement for Mr. LaPierre was being discussed with the board. But it never occurred to him that the language in that employment agreement would provide the authority for Mr. LaPierre to initiate a Chapter 11 proceeding.

Here, Mr. LaPierre claimed under oath it was the board's fault if they didn't understand the meaning of the language. They could have asked questions. They should have asked questions. They should have figured it out. But Mr. LaPierre had to admit that his own understanding of that language in his employment agreement came from talking to counsel. He didn't even know it himself until his lawyers explained to him that it was purportedly going to give him that authorization.

One of the most damning admissions that Mr. LaPierre made, and pardon me if I lose count, was that as the general counsel -- that the NRA's general counsel would be in a better position to understand the language in the employment agreement as opposed to any of the board members. But Mr. Frazer didn't even know. So this idea that any board member understood or should have understood that they were approving a Chapter 11 petition makes no sense.

One of the other remarkable parts about this fraudulent bankruptcy filing is the people that Mr. LaPierre and Mr. Brewer and others kept it from. Mr. LaPierre testified and made clear that it was a small tight-knit circle, that he

had no intention of telling the board that there was going to be a filing based on these paranoid made-up fears that they would leak the information or that it would somehow get out and they wouldn't be able to move forward.

The notion that there's no way that the board of directors would go along with this -- with such a reckless, unnecessary, and even -- with the authorization of the board is just more evidence of their unlawful actions here.

In addition to not telling the board, we've heard it a ton, Mr. LaPierre did not tell the general counsel, he didn't tell the CFO, two of the most critical officers in any corporation and two people that this Court knows fully well that are normally kept in the loop with normal good-faith bankruptcy filings. Mr. Spray and Ms. Rowling both admit that they did not find out about the bankruptcy until after the filing and that it was a big mistake in preparation for the filing.

I want to talk a little bit about ratification because I think this is important. Although the attorneys assisting Mr. LaPierre in this conspiracy to defraud the board were well aware of what they intended to do with respect to this employment agreement and this language, they said nothing at the meeting. But Mr. LaPierre and the special litigation committee and their attorneys, they knew this was an unauthorized filing. That's why they talked before about

getting the board to ratify the filing of this bankruptcy later.

The old adage of asking for forgiveness rather than asking for permission, why else would they discuss ratification before filing, as Mr. Cotton testified here, unless they knew they were going to file without proper authority.

Mr. LaPierre here testified that he specifically did not -- he specifically discussed not telling the board about the language in the employment agreement. And he testified also that the only thing he relied on to give him comfort in filing, again, was that language in his employment agreement that the board couldn't have possibly know was going to give him that authorization.

Mr. Frazer, general counsel, understood the dismissal issue in this case, that if the bankruptcy was not an authorized bankruptcy filing, it could not be filed in good faith, which is exactly what happened here. Judge Journey made clear that he believed the filing of this bankruptcy was a fraud on this Court.

And nowhere maybe is there a more direct misrepresentation regarding authority to enter the bankruptcy process than the resolution of the special litigation committee that was specifically attached to and made part of the bankruptcy petition itself. No one has claimed that the special litigation committee had any authority to authorize the

bankruptcy filing.

And a number of witnesses, even from the NRA, have testified under oath that no such authority existed. For example, here's Mr. Cotton's testimony making clear that the special litigation committee did not have authority to file bankruptcy on its own.

One of the things that Mr. Pronske touched on is with respect to Mr. LaPierre's conflicts with filing this bankruptcy. Part of the relief sought by the New York Attorney General is that he should be removed as an officer and director from the NRA. So by attempting to reorganize the NRA in Texas, Mr. LaPierre was taking this relief off the table for himself personally. If the NRA is permitted to reorganize in Texas, then the New York Attorney General isn't going to have any jurisdiction to remove Mr. LaPierre as an officer of a Texas nonprofit organization.

We heard testimony throughout the trial that when the final decision was made to file for bankruptcy, no one, Mr. LaPierre or the special litigation committee, went back to the board to obtain approval. They determined they'd rather ask for forgiveness than ask for permission. And they put the board in an untenable position, let's go ratify it.

As Mr. Pronske alluded to, Judge Journey, "Buz" Mills, and others testified that the board was put into an untenable position. But the problem though with all of this,

Your Honor, is you can't ratify a fraud, which is exactly what the evidence in this trial has shown.

I want to talk briefly about Sea Girt. I know there's been a lot of discussion about it, no employees or operations other than this bankruptcy filing. Mr. Frazer's testimony that the basis upon which the NRA obtained venue in Texas was through Sea Girt, making clear that this sham corporation was only formed to carry out the NRA's fraud on this Court trying to secure venue in Texas.

And after serving its fraudulent venue purpose, there was a discussion about this briefly earlier, Sea Girt doesn't have any assets left. The NRA's monthly operating report shows that that $50,000 that was originally there has now been gone back to the Brewer firm. And in short, it's undisputed that Sea Girt was a sham entity for securing venue.

The NRA has admitted to that. They're unapologetic about it. But like Mr. Pronske said, you're completely changing and rewriting the history books of bankruptcy law by permitting those actions to take place.

I want to spend a few minutes talking about the ripple effect that this bankruptcy is going to create if it's not dismissed. This Court, as we talked at the beginning, has acknowledged the importance of this case. And we agree that with that sentiment, we believe it's critical to address the issue of what happens if this case is permitted to move forward

and the dangerous precedent we believe that it will set.

If this case is not dismissed, Your Honor, it's going throw a monkey wrench into the gears of federalism. It will put a gasoline on the ideological fires that are already raging out of control in this country. It will impugn the Attorney General of New York, all of its public officials, and it will impugn the state and federal courts of New York giving truth and support to the internationally-published why that New York politicians, regulators, and judges are corrupt.

That is why the decision to dismiss this case is so important. The purported debtors have intentionally presented the case to you in such a form that you must find that an entire state isn't capable of creating, enforcing, and adjudicating its own laws fairly and justly in a non-corrupt manner. Should the Court allowed this case to proceed, the standing necessary in order to invoke this Court's jurisdiction won't completely change.

The NRA mentioned the issue of a receivership, but there is not even a mention of a receiver anywhere in the New York Attorney General's complaint. And Mr. LaPierre and others, as we've talked about, have denied any threat of a receiver.

The NRA came in comparing the New York Attorney General's conduct as seeking a foreclosure, but as we discussed a unilateral disposition, that's a unilateral disposition of

property. The New York Attorney General has no ability to involuntarily dissolve the NRA, only in a New York state court in its sole discretion at the conclusion of the evidence and only if it believes that it's in the public's best interest.

And more importantly, the admissions through the NRA's general counsel, Mr. LaPierre, Mr. Frazer, and others, and the acknowledgment of other board members, including the distinguished Judge Journey, made clear that there's a long road between the filing of this complaint in August of 2020 and a trial up in New York. We're not even close. Discovery has just started.

There's no imminent harm. There's no burdensome or oppressive situation due to just the claim. The NRA has sued the New York Attorney General up in federal court in New York. The NRA has used the New York Attorney General's complaint to clean house at the lowest levels of the NRA, but the threat of a continued regulatory action does not seem to have changed much about the way the NRA does business at the top.

So what else would it mean if this bankruptcy is not dismissed? An unprecedented intervention into the workings of a state government and highly-proprietary area concerning nonprofits, which could be compared to wards of the state.

Permitting this case to go forward would mean a major interference in the workings of state and potentially federal courts already involved in the dispute involving dissolution.

Permitting this case to go forward is essentially confirmation that the terrible defamation, slander, and libel against the State of New York, which is an NRA and Wayne LaPierre way of doing business, has validity. Failure to dismiss this case would give truth to the lie that New York officials are corrupt and do not allow for a level playing field.

Permitting this case to move forward would make the basis of bankruptcy jurisdiction depend on ideological differences between states and essentially the promotion of hate speech based on the way people think in whatever part of the country they live in.

The NRA has framed the question of its right to stay in bankruptcy court in such a way that the failure to dismiss gives truth to another lie, that a party is entitled to escape a jurisdiction based on the way its people think and live for a preferred supposedly more enlightened, more personally compatible justice. Texas has no legal relationship to the NRA but for the sham corporation that it created to enter this Court.

Permitting this case to go forward means that throughout the United States, if any regulator or administrative agency simply seeks the relief of dissolution, seeks the relief of dissolution against a nonprofit or other entity, that entity will be able to immediately point to this

NRA bankruptcy case as its "get out of jail free" card where it can simply put up a shell corporation, file for Chapter 11 bankruptcy, and move its operations and assets out of town.

Permitting this case to move forward means that attorney generals and other administrative agencies tasked with trying to protect and act on behalf of the public in their respective states will be forced to consider whether they can even name or seek the relief of dissolution because they will know that if we do that, if we simply ask for it, even if we think it's absolutely appropriate and warranted, then that entity can simply point to the 2021 NRA bankruptcy proceeding in Dallas, Texas as the opinion that rewrote the history books of bankruptcy law in this country.

And, yes, that is how important this case is because, Your Honor, you would be changing the playing field here taking away the rights of the regulators across the United States to do the job they see appropriate, the police and regulatory powers. One the other similar questions before this Court regarding dismissal is whether a party can use any method, any fraud, any devious scheme to enter the bankruptcy court and expect to stay there.

This is not a question of unclean hands in this case. It is hands made actually filthy by the dirty work it took to put together a scheme that brought us to this hearing today. This Court must decide if the toll to enter the bankruptcy

courts may be paid with the coin of blatant fraud on the NRA's board, its executives, the other parties to this proceeding, and the Court.

You have the opportunity to send that message today that the bankruptcy courts cannot be the subjects of fraud. In order to do that, this bankruptcy case needs to be dismissed with prejudice.

I'd like to talk briefly about a trustee. As we -- as I discussed at opening, the relief that Ackerman McQueen is seeking here is dismissal. But if the Court does not believe that that is appropriate, we believe that the overwhelming evidence that this Court has heard over the last month supports and justifies, mandates the appointment of a Chapter 11 trustee.

The Court is familiar with the standard for appointment of a trustee: fraud, dishonesty, incompetent, gross mismanagement. Let's talk a little bit about fraud and dishonesty. We've talked a lot about the evidence presented to the Court, how the filing of this bankruptcy was not only a fraud on the NRA's board but a fraud on this Court that amounts to nothing else than a litigation and publicity stunt.

Judge Journey testified the filing of this bankruptcy was the symptom of the disease. We've seen evidence of how the board of directors was intentionally not informed about the bankruptcy filing by management. We've seen evidence of how

none of the NRA's salaried officers were informed.

You've seen evidence of how Mr. LaPierre and his attorneys intentionally slipped the language into his employment agreement to try and deceive and trick the board. You've seen evidence of how Sea Girt was formed as a shell company 52 days before the filing of this bankruptcy to simply secure venue. You've seen evidence of how the $5 million in funds was transferred to the Brewer firm's trust account to keep any record of pre-bankruptcy off the books and unnoticed by the NRA's CFO and account staff.

We're not talking about something that happened years ago. We're not talking about pre-course correction. We're talking about acts recently taken by the NRA's current leadership and their counsel. The bankruptcy petition filed in this action is exhibit A for the type of fraudulent conduct that merits the appointment of a trustee in this case.

Let's talk a little bit more about the other fraud and dishonesty that we heard throughout this trial. We saw evidence that the hundreds of thousands of dollars in excess benefits Mr. LaPierre received. He's apparently agreed to pay back 300,000 of that, but it's abundantly clear that that's only a fraction of the improper benefits he received.

For example, there's no evidence that he's agreed to pay back all the benefits he received when he would take off to the Bahamas on his buddy's luxury yacht, especially after a

tragic school shooting where the NRA likely needed him the most.

Although the NRA has tried to make it sound like all of these expenses were accidental or unintentional, I didn't know, you've seen evidence from Mr. LaPierre's own travel agent, Ms. Stanford, who testified that Mr. LaPierre himself directed Ms. Stanford to exclude certain details about his travel from invoices -- about his travel in the invoices.

You've seen evidence of multiple instances of intentional embezzlement by Mr. LaPierre's personal assistant, Millie Hallow, who beyond all rational explanation has been allowed to keep her job with no discipline.

You've seen evidence how the NRA's current president, Carolyn Meadows, testified that she burned and shred -- she burned and shred her notes, her NRA notes, upon the advice of the NRA's general counsel, John Frazer, just so they wouldn't be able to be subpoenaed.

You've seen evidence that the Brewer firm pushed through an eleventh-hour preferential payment to itself, $1.2 million, the day before this bankruptcy petition was filed.

Let's talk a little bit about the incompetence and gross mismanagement. Throughout this trial, many of the NRA's own witnesses, its own witnesses, even its own counsel acknowledged that the NRA had been grossly mismanaged in the past. Michael Ursling repeatedly testified how the management

was in a mess, and this was not just Woody Phillips. This is not just about Woody Phillips. This is about Mr. LaPierre.

And any notion that this is any wrongdoing, any lack of internal controls in the NRA's finance department is all a result of Mr. Phillips, as, again, it makes no sense. And you know what, there's only one person that's responsible for the accounting department and Mr. Phillips, and that is Wayne LaPierre.

Here's more examples of the incompetence and gross mismanagement that we heard throughout this trial. Ms. Rowling acknowledging the override of internal controls, the American Express cards, the conflicts of interest, the failure to follow the $100,000 procurement policy. And relating to that, we heard testimony that apparently according -- to the hiring of law firms, it doesn't apply. The NRA can just ignore the $100,000 procurement policy. According to the lawyers and some of the witnesses, no evidence of that. Vendors being paid without contracts.

But then in 2017, the NRA started down this course correction, this self-correction. Mr. Frazer, Mr. LaPierre, Mr. Cotton testified that the Schneiderman call in mid-2017, that was the gamechanger. Mr. King suggested that right after the Schneiderman call, they went and hired the Brewer firm because they were a New York law firm. But remember, Morgan Lewis, according to Mr. LaPierre, was hired to start off the

purported self-correction in 2017.

The Brewer law firm was hired in March of 2018 to handle the Lockton litigation. They were not hired for this self-correction. What happened is the Brewer firm came in and they started taking everything over bit by bit, piece by piece. And that's why that chart that Mr. Pronske showed you earlier continued to go up and up and up. That's why the litigation exploded -- the four lawsuits against my client, the litigation against Colonel North, and all the other litigation we've heard about.

Mr. LaPierre is taking credit for this course correction claim that he was determined to go down the principal path, do the 360-degree top-to-bottom review. The problem with that is did it work. Is the NRA's house really in order? Is this really true? Can you really clean your house if you just swept everything under the rug?

If your definition of cleaning house is just getting rid of everyone who disagrees with you, that doesn't fix the underlying problem. Ultimately, the focus can't be on just whether past errors have been fixed but whether the effects of those errors are still being felt by the NRA and, most importantly, whether the same management is in place who allowed the errors to occur in the first place.

Let's look at some of the evidence that was post-course correction. The main theme that came out of testimony

from witnesses like Judge Journey, Mr. Mills, Esther Schneider, these various board members, Wayne's kingdom, Wayne's sole proprietorship, Wayne's world. It's all about Mr. LaPierre.

Mr. Pronske talked about Mr. LaPierre's inability to answer the questions throughout this trial, I think it was 60 times, he said, and the constant admonishment. If Mr. LaPierre cannot follow the Court's instructions in a trial, a live trial before the general public, how in the world could anyone expect that he's going to listen to anybody else.

And like any good dictator, Mr. LaPierre understands that when you can't -- when you control the flow of information, you can control the people and the outcomes in your favor. Mr. Makris talked about management by chaos. Here's the testimony of Mr. Mills, Judge Journey, Rocky Marshall about the lack of oversight by the board.

At the end of the day, Mr. LaPierre, regardless of what he says to this Court, does what he wants. Another common theme that we heard throughout this trial was the frequency of the board retroactively approving prior actions taken by management about the filing of this bankruptcy. We heard testimony from "Buz" Mills and Rocky Marshall this was an anomaly compared to other -- the NRA was an anomaly in comparison with other boards that they had served on.

These are not ultimately issues that have been cleaned up or self-corrected. At the end of the day, these are

systematic issues that are symptomatic of an ingrained culture at the NRA which won't truly be corrected until new management is in place.

And while the NRA management exercises complete control over the board, it only happens due to the director's inability or unwillingness to do something about it. Mr. Pronske talked about Judge Journey describing the board as being supine, completely passive to the desires and requests of those they are supposed to oversee. The tail is wagging the dog.

Again, here's various examples of evidence that we have heard throughout this trial no real oversight, lacks safety switches of corporate governance, nominated committee picks management, not consulting people before they're fired, not consulting people before they're hired.

Let's talk a little bit about Wit Davis. We talked a lot about the various Brewer firm connections: Mr. Davis; Mr. Correll, a former partner; Mr. Marshall -- Marshall Smith who was going to be the proposed CRO; Mr. Davis; the Neligan firm; Mr. Garman. The board wasn't consulted about the hiring of Wit Davis. And Mr. Mills talked about all the problems that the board has with Mr. Davis, counsel to the board, and how they weren't even notified about his prior relationship with Bill Brewer.

What's really happened here is there's been this

attempt to put people in place to cloak the NRA in this wide array of privilege. And we've heard it a whole lot in the month of expedited discovery. And we didn't hear it as much in this trial, but it is rampant. Anything that the NRA wants to do, they cloak it in this privilege.

And if you look at all of the individuals surrounding this privilege, they've been carefully placed. This is not an accident. The control that is being seen here at the NRA is really at the direction of two people, Mr. LaPierre and Mr. Brewer.

Here's some additional examples of the lack of oversight in the testimony that we heard. The various contracts that NRA board members had with the NRA, Sandy Froman, she receives $50,000 annually for an office space reimbursement. Marion Hammer, hundreds of thousands of dollars a year paid to her.

We heard testimony that the NRA gives business to (indiscernible) ongoing compensation to David Keene. I believe -- I think it was about two dozen NRA board members that at least -- oh yeah, dozens of board members that currently have agreements and are receiving compensation from this nonprofit, this nonprofit organization.

Anther way to keep the board passive is just to simply get rid of the ones who cause too much trouble. In the last two years, some 21 board members ousted or resigned. They

were either kicked out or left because of retaliation with Mr. LaPierre. We heard a ton of evidence about anyone that challenges LaPierre, anybody that challenges Mr. Brewer, they're gone.

They're labeled extortionists. They're publicly defamed. They're shouted down in board meetings. They're accused of having alternative agendas. They're accused of being anti-Second Amendment.

Craig Spray, the change agent, the change agent who numerous witnesses testified really was the catalyst or the change agent for these internal controls that purportedly changed. He's fired. Maybe the one good thing that the NRA had, Mr. LaPierre fired him without consulting anybody.

Before I conclude, I do want to address this Court's questions from last Thursday. And I'm not going to repeat. I know that the Court is well aware of what it asked the parties to address. But I'd first like to address the language and the notion of an involuntary dissolution.

And, again, whether dissolution is necessary or not is best answered by the New York State and its courts who are charged with protecting the public interest. I know I've said that a lot, but it is fundamental to why we're here. There's no reason for this Court to usurp the New York judiciary's role or right to answer that question, but that's exactly, Your Honor, what the NRA is asking you to do here.

The phrase that you used, "an otherwise viable debtor, yes, this Court must consider the economic realities of the NRA, which we've seen is undisputedly solvent. It's in its best financial condition in years. But we would also present to the Court that viable includes whether the NRA is a viable charity in New York, meaning that whether it's serving its purpose under New York nonprofit law despite repeatedly violating its tax-free status.

But, again, this is not for this Court to decide. It's for the independent judiciary in New York after hearing all of the evidence, after hearing the NRA talk about their course correction. The NRA board members, general counsel, executives, special litigation committee members, and officers all admitted the New York courts are not weaponized. There's no reason why those courts should not -- should be denied the opportunity of deciding whether a nonprofit within their jurisdiction is viable in terms of whether it is serving the public interest.

The NRA spent most of its time making the case that no matter what Mr. LaPierre does, as long as the money rolls in, a big fundraiser, no matter how big of a slice he and his cronies take of that money, he should be allowed to stay. But this is the very definition of corruption, sacrificing what is right for what is lucrative. Surely this would not pass the public-interest test.

Continued corruption would certainly indicate that as a nonprofit entity, betraying the public's trust, NRA may not be viable. But setting aside the question of when this Court should determine whether a dissolution is unnecessary and whether an entity is viable, there's undoubtedly no urgency in reaching the issue now of an unnecessary dissolution or the viability of the NRA. There's no urgency in taking the question, in taking the issue of should the NRA be dissolved, is that appropriate based on all of the evidence. There is no need to decide that issue now.

In answering your question about the bankruptcy, whether the bankruptcy purpose is broad enough to encapsulate the intended relief of dissolution that requires judicial determination to be in the best interest of the public, at the very earliest, we would contend that the Court could intervene if it felt that it must when and if Judge Joel Cohen in his statutory discretion after the conclusion of all the evidence determines that involuntary dissolution of the NRA is in the best interest of the public.

There is every reason for this Court to respect federalism, to respect the integrity and good conscience of the judiciary, state and federal courts of the State of New York, and allow the regulatory and judicial process to take its natural course. If this case is dismissed, the NRA is going to be okay. They're swimming in cash. They have remedies in

different courts. They're going to be okay.

And, Your Honor, we believe that the evidence that you have heard throughout the last month mandates only one course of action in this case, and that is dismissal of this bankruptcy. And I will reserve the remainder of my time for rebuttal. Thank you.

THE COURT: Thank you, Mr. Mason. By my rough calculations, you have slightly more than 20 minutes left.

MR. MASON: Thank you, Your Honor.

THE COURT: Thank you.

Before we break, let me just review. Mr. Watson, Mr. Taylor, I think on Thursday y'all said you'd need between 30 and 45 minutes. Is that still right?

MR. TAYLOR: That's correct, Your Honor.

THE COURT: Okay. And then, Ms. Lambert, we had sent a message to you I think over the weekend saying it looks like we can get to the U.S. Trustee before lunch. And y'all are saying about 30 minutes; is that right?

MS. LAMBERT: Yes, Your Honor.

THE COURT: Okay. I believe we can also hear the five-minute presentation by Mr. Herring also before lunch. So if y'all could be ready.

Why don't we take a 15-minute recess so everybody can get their thoughts together, and we'll come back in at 10:45.

(Recess at 10:28 a.m./Reconvened at 10:45 a.m.)

THE COURT: We're back on the record in NRA in a minute.

(Pause)

THE COURT: Mr. Taylor, are you ready?

MR. TAYLOR: Yes, Your Honor. I am.

THE COURT: Mr. Garman, I can see your room. Are y'all ready?

MR. GARMAN: Yes, sir.

THE COURT: All right. Mr. Taylor?

MR. TAYLOR: Yes, Your Honor. Before I get into my direct closing, we would like to attempt to answer Your Honor's question. And just for purposes of a clear record, the question as we understand it is while one purpose of Chapter 11 is to present a necessary dilution of an otherwise viable debtor, is that purpose broad enough to include a situation where the debtor is seeking protection from a potential dissolution that would not be a collateral effect of litigation but rather the intended relief sought that would only occur upon a judicial determination that dissolution is in the best interest of the public.

We also have searched the case law for anything definitively on point. We haven't found anything 100 percent on square with that exact fact pattern, but we do believe that there are some answers available.

We start with that insolvency is not a prerequisite

to a finding of good faith under Section 1129(a), and it is not a requirement to be eligible to file for bankruptcy relief.

Fields Station, LLC v. Capital Food Corp. is a good example of a case. That's 490 F.3d 21 (1st Cir. 2007). And that case stated: "A debtor need not be insolvent before filing a bankruptcy petition, however, provided it is experiencing 'some type of financial distress'" -- and they cite to Integrated Telecom that says "The absence of an insolvency requirement encourages companies to file for Chapter 11 before they face a financially hopeless situation."

And that's exactly what we have here, Your Honor. The NRA has seen a freight train coming at them, and they have acted expeditiously to avoid that freight train hitting them and blowing them off the tracks. In fact, the Code itself distinguishes whether the automatic stay such as the enforcement action here can even proceed.

If it is a proper exercise of police and regulatory effect, then it must proceed. Section 362(b)(4) expressly allows certain governmental enforcement actions to continue, notwithstanding a pending bankruptcy. In other words, the New York AG dissolution suit could technically continue to the extent it is an exercise of police or regulatory power.

The Fifth Circuit has ruled that this determination could be summed up as follows, and we actually point to the very same case that the New York AG cited to in its opening in

answering this question.

"The pecuniary purpose and public policy test both contemplate that the bankruptcy court after assessing the totality of the circumstances will determine whether the particular regulatory proceeding at issue is designed primarily to protect the public safety and welfare or represents a governmental attempt to recover from property of the debtor estate, whether on its own claim, or on the non-governmental debts of private parties." That's Halo Wireless that's previously been cited to this Court.

In the current case, while the New York AG enforcement action can proceed as far as the reporting requirements and the means by which the NRA reports to the New York regulators while it is still incorporated there, that part can proceed. But we think that that is a two-pronged type of case. The damages phase of that action, the dissolution in an attempt to impose pecuniary sanctions on the NRA, take away its assets and redistribute it is something expressly prohibited by the Code, and we think that it should not be allowed to proceed here.

And, therefore, we think that this reorganization should be allowed to restructure and reincorporate within Texas to avoid that very outcome. We'll address that a little bit more in our closing arguments about how we see that playing out, Your Honor.

Moving on to our closing argument, before I start, I know Your Honor and this Court has seen myself and Mr. Watson appearing before Judge Journey and all, but I did want to take this opportunity to thank on the record my colleagues Robby Clark who's provided support throughout this case to us and to Christian Ellis who has helped prepare our closing and helped me with that.

May it please the Court, we believe this trial is the most important trial in America right now. It is so important because the constitutional rights that the citizens of this country and the voices of millions of Americans who support and uphold those rights ride on the outcome of this case.

We have been in trial together for a month now. We truly appreciate Your Honor's attention and demonstrated fairness throughout the entire process. Anyone watching this trial has seen the judicial process administered evenhandedly and rightly and, for that, we are very grateful.

Now we bring a close to this all-important trial which in large part will determine whether or not the voices of millions of America will be silenced -- of Americans will be silenced or whether they will continue to be heard as they have for 150 years.

We believe that the most important people in this case, the nearly five million members of the NRA, including over 2.5 million lifetime members, have not been entirely

represented. My clients have brought their action to represent as best they could the best interests of the members as they saw fit. We do look forward to the hearing on our motion to form a member committee in the coming days.

But at this time, without such a membership committee in place, we implore the Court to recognize that it is our clients and our clients only who do not have a pecuniary or personal interest in this case. Our clients are paying their legal fees out of their own funds and out of the monies raised by appealing to everyday members of the NRA to save and restore the NRA.

Neither Judge Journey nor any of our clients will achieve financial gain or financial loss as a result of what happens here today, which cannot be said of any other party. Judge Phillip Journey; Roscoe "Rocky" Marshall, Jr.; Esther Schneider; Owen "Buz" Mills; and Bart Skelton do stand to win or lose in this case what they hold much more dear than financial gain. They and members of the NRA could lose the voice protecting their Second Amendment rights and the ongoing life and livelihood of the only organization in America with the history, personnel, resources, and public trust necessary to protect and preserve those Second Amendment rights.

For our clients and the millions of other members of the NRA, the ongoing life at the NRA and this important Second Amendment mission is literally equivalent to the ongoing

preservation of the freedom of the United States of America. We are, therefore, before this bankruptcy court to ensure the preservation of those rights and to preserve the NRA.

Now the circumstances of how we got here have been told and retold during this trial. But in closing, we must say two things. First, we admit albeit somewhat begrudgingly, but we do admit that this bankruptcy filing was entirely valid under the law and that the entire matter is properly before this Court.

Second, we believe that the overall management style and circumstances that led us here are indicative of the steps that we must take in this case going forward to examine and modify how the NRA does its business.

The relief sought by the various parties to this matter range along a spectrum, Your Honor. On the one side of the spectrum, the New York AG's Office moves to dismiss this case and subsequently dissolve the NRA and seize all of its assets. That is clear. This is clearly an untenable and imprudent consequence and is no way appropriate here.

Dismissal would only be in the interest of a handful of interested parties. This bankruptcy case is in the best interest of all interested parties. It was lawfully filed and should be allowed to continue. Similarly, and as we'll address more fully, the alternative motion for a trustee is in no way an acceptable solution for this situation either.

On the other side of the spectrum is the NRA's request for a "inside baseball-style CRO" whose findings would largely be confidential and without any meaningful powers to identify and address management problems.

We are advancing a solution that we believe would be a "Goldilocks" solution. It is not a "Goldilocks" solution simply because it is the middle ground. Just like the story, our proposed solution rejects the hot porridge and cold porridge options as being entirely unreasonable and unuseable. Our proposal produces a solution that is proper for this situation, the parties, the members of the NRA, and the overall good of our country's ongoing constitutional discussions.

We respectfully pray this Court to appoint an examiner or, if the Court desires, a CRO with the following powers. Before proceeding, we note that this list of powers differs slightly from our filing, but it will be recited fully in our proposed order to the Court that we will file today or tomorrow.

We request that the examiner be required to:

One, independently examine the overall management processes of the NRA and, to the extent necessary, suggest modifications to those management processes for the NRA's executive management, if necessary to be implemented via court order in the initial stages of this case and, ultimately, to be implemented as a long-term solution via plan of reorganization.

Likewise, we welcome proposed changes and fixes to the ways and means by which the board operates in which changes could be implemented in a plan of reorganization. These changes would include how management communicates with the board and how management makes decisions.

For example, the examiner will provide management guidance to achieve certainty regarding the content and propriety of Form 990 filings and similar issues. This power would also include the ability to form or disband management committees or other management structures.

Two, to independently examine compensation, benefits, and other transfers made to vendors, management, board members, and their respective affiliates.

Three, to independently examine and, to the extent necessary, put forth a plan of recovery of any improperly paid amounts.

Four, to independently examine and, to the extent necessary, remove management for cause.

Five, to independently examine and, to the extent necessary, report to the membership or membership committee should one be formed the circumstances of any board member wrongdoing and put forth removal of the offending board members as per the bylaws of the organization.

Six, report the outcomes of all independent examinations directly to the Court, board of directors, the

creditors' committee, and members or member committee.

Seven, the ability to come back and ask this Court for expanded powers and duties as necessary.

And, eight, to participate in the formulation of a plan of reorganization by coordinating efforts among management, the Unsecured Creditors' Committee, board of directors, the membership committee, and other parties in interest.

Now can this task be performed with a chief restructuring officer? Like the other parties, we have great respect for Mr. Robichaux. And, yes, we do believe that it can be done with a CRO, and we would support the appointment of a CRO with the above enumerated powers. We believe that the appointment of an examiner is a better result because of an examiner's inherent independence and direct reporting requirements to this Court.

He or she would be a court-appointed fiduciary and would be truly independent and not beholden to management or any board member. But, ultimately, we are confident that the Court will select the correct vehicle, whether it be examiner or CRO, to accomplish these goals.

We further request that the Court with input from the board of directors and membership committee issue final approval of any engagement agreement with any CRO or in an order directing and then confirming the appointment of an

examiner.

We would ask that the engagement agreement or the order approving the examiner, as appropriate, include the following provisions:

One, that no confidentiality provision protect the examiner's disclosure or CRO's disclosure to the Court or other stakeholders of its findings and recommendations.

Two, that the examiner may not fail to disclose his or her findings or recommendations in full due to the application of the attorney-client privilege and is entitled to waive the privilege to execute the examiner or CRO's duties.

Three, that the examiner or CRO report its findings and recommendations directly to the board, the Unsecured Creditors' Committee, membership committee, and not selectively or exclusively to management or any management committee. In other words, any reporting must be made in full to the board of directors, membership committee, and this Court.

Four, that the special litigation committee not necessarily be the primary point of contact for the examiner or CRO for day-to-day operations or any other function. That independent person must be free to interact with the debtor as that examiner or CRO sees fit.

Five, that the examiner have full autonomy to investigate freely or take any other action allowed by this Court and need not obtain prior advance approval of the special

litigation committee or any other stakeholder.

The examiner or CRO structure that we envision is best for the NRA and its members is one of autonomy, independence, and transparency. We do not want the process to be opaque, orchestrated by current management, or cloaked in secrecy.

We recognize that the appointment of a trustee would result in autonomy, as well, but such appointment would be, to use the analogy again, a bitter porridge that could lead to significant harm to the NRA and even death. Appointment of a trustee would be so disruptive and overbearing that the entire organization may well cease to exist.

Appointment of a trustee would terminate exclusivity, resulting in a potential torrent of competing reorganization plans proving even more costly, divisive, distracting, and painfully inefficient for all involved.

The appointment of a trustee would result in the loss of institutional knowledge, and many of the things that make the NRA a viable and functioning entity would likely disappear. Expenses would skyrocket, and the result would be calamitous for millions of Americans who rely on the NRA's advocacy.

Moreover, fundraising, the life blood to fund the NRA's missions would be harmed if not perhaps effectively shut down if a trustee were to be appointed.

The appointment of an examiner or CRO with powers and

restrictions as enumerated above fits the bill. This "Goldilocks" solution keeps the lights on, serves the interest of the members, allows fundraising to continue, and fosters the spirit of cooperation among all stakeholders and parties in interest that will allow the NRA to function all while it receives the management examination and possible overhaul that is needed here.

Certainly, the NRA has put on ample evidence that while the problems of 2017 and '18 were significant, that they have taken many efforts to remediate those issues. On the other hand, the New York AG has also put on evidence of some lingering concerns with how the NRA continues to be managed, which we view primarily as curable with the right management, people, and processes in place.

What the New York AG has not done is present a case that meets her burden for the appointment of a trustee, which as Your Honor knows is a clear and convincing burden of proof. As the Fifth Circuit Court ruled in 2004 in Shafer v. Army and Air Force Exchange, clear and convincing evidence is: "that weight of proof which produces in the mind of the trier of fact a firm belief on conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable the fact-finder to come to a clear conviction without hesitancy of the truth of the precise facts of the case."

Here, the New York AG has simply not met this clear and convincing burden of proof to absolutely establish fraud, dishonesty, incompetence, or gross mismanagement. Are there indications of incompetent or mismanagement? Yes, there are indications of those things occurring. And those occasions give our client the very desire for the appointment of the independent examiner.

But the statutory burden that the New York AG bears to have the trustee appointed is clear and convincing evidence. And though this case has been hotly disputed, that burden is simply not been met.

The "Goldilocks" plan that Judge Phillip Journey; Roscoe "Rocky" Marshall, Jr.; Esther Schneider; Owen "Buz" Mills; and Bart Skelton put before you today is a plan that best serves the members, best preserves the NRA for the benefit of creditors and its members, and best serves the interests of the future of the NRA.

We fully anticipate under our proposal that ultimately any fines required by New York law will be paid to the New York regulatory authorities and, further, that any causes of action that the NRA owns against third parties will be preserved. And those claims may exist against current management, board members, or vendors. They need to be preserved for the benefit of the bankruptcy estate and the unsecured creditors and also for the members of the NRA.

Judge Journey and his fellow colleagues have spent their own money, time, and resources for the benefit of the rank and file members of the NRA. Judge Journey volunteers in a way that embodies the values of the NRA. He is a 4-H volunteer incorporating NRA training into his service. He is a benefactor member of the NRA with a lifetime commitment to the organization.

He is a former state legislator who has helped write much of the gun legislation in the State of Kansas. He loves the NRA. He supports its mission and enjoys the constitutional rights and protections that the NRA has fought long and hard to preserve.

Each of our other clients likewise share his passion for the NRA and have likewise given generously of their time, money, and passion to the organization.

The NRA exists to train young people and adults in the safe handling and accurate shooting of firearms. They provide valuable training to Boy Scouts of America, 4-H, and other youth and adult groups across the United States. The number of lives saved and injuries avoided due to the NRA's 150 years of safety training and instruction are incalculable.

The NRA also exists to protect our First and Second Amendment freedoms. There is no other organization in the United States that has been more effective in preserving those freedoms than the NRA. For the NRA to be dissolved or forcibly

taken over and damaged by an appointed trustee would be akin to ripping out the constitutional soul of our country.

Judge Journey, "Rocky" Marshall, Esther Schneider, "Buz" Mills, and Bart Skelton are lifetime members. They along with millions of other Americans paid for these lifetime memberships because they have made a lifetime commitment the values and freedoms that they hold most dear. The NRA must be preserved, yet, we know the NRA must be closely examined and their management practices likely must change.

Our solution accomplishes those goals and does so in a manner that is lawful, equitable, and just. We pray that you grant the relief sought by these petitioners. Thank you, Your Honor.

THE COURT: Thank you, Mr. Taylor.

Ms. Lambert or Mr. Salitore for the United States Trustee?

MS. LAMBERT: May it please the Court, my name is Lisa Lambert. I represent the United States Trustee.

THE COURT: Welcome.

MS. LAMBERT: Your Honor, in the United States Trustee's statement regarding the motion seeking appointment of an examiner, trustee, or case dismissal, we provided our position on the legal standards required for the various forms of relief requested by the parties. And we specifically reserve the right to take a position on the motions after

review of the evidence.

And to assist in reviewing the evidence, the United States Trustee's attorneys, among other things, have conducted a Section 341 meeting at which the debtors' representatives testified under oath for seven hours. We have participated in discovery. We have attended every deposition, and we have attended every day of trial.

It is on this history that the United States Trustee makes this statement. Considering the undisputed factual record developed here and applying those facts to the applicable law, we submit that the movants have met their burden to justify each of the forms of relief requested: dismissal, a trustee, or an examiner. The NRA has not met its burden, however, to justify approval of a chief restructuring officer.

So let's talk about each of the remedies that have been requested; first, dismissal. The legal standard, as everyone has stated, under the dismissal statute, Section 1112, is cause. And the parties have alleged that the cause in this case is bad faith. As the NRA acknowledges in its brief, the standard is preponderance of the evidence. And good faith has been the standard incorporated literally or by judicial interpretation since 1898.

In Little Creek and other cases, the Fifth Circuit has noted that a bad-faith dismissal may be based on the

totality of circumstances considering all of the facts and circumstances surrounding the debtor's filing including pre-petition bad-faith conduct and post-petition bad-faith conduct.

In addition, the Fifth Circuit in Antelope Technologies and numerous lower court cases also have held that following to gain a litigation advantage while solvent constitutes bad faith. And, for example, in Antelope Technologies, the Court considered releases, exculpations, or injunctions protecting third parties in a plan as suggesting an improper ulterior motive. Antelope Technologies involved an attempt to gain control of the litigation and take advantage while fully solvent.

So let's turn to the undisputed evidence about the pre-petition facts, post-petition facts in the absence of a legitimate bankruptcy purpose. The NRA has stated that it is seeking refuge from the New York Attorney General's actions and wishes to change its state of incorporation. That can be done outside of bankruptcy. It is not a legitimate reason for filing bankruptcy.

The NRA created Sea Girt to manufacture venue. And here's what we know about Sea Girt. It is a non-operating for-profit LLC. It has no employees. There's been no stated intent of ever operating. In fact, the pending plan proposes to dissolve it. Even the $50,000 put on deposit with Sea Girt was later withdrawn.

They say they're fixing it, that it's a problem with opening the debtor-in-possession account, but two MORs show zero balance in the Sea Girt account. They've had plenty of time. It's a shell with no apparent purpose other than to anchor venue in this district.

So let's shift from Sea Girt to the NRA. The filing was conceived and executed without even a minimum amount of transparency. Putting aside all the questions about the authority to file under the NRA's governing documents, the customary authorities were not informed. They did not know about the bankruptcy filing, not the board, not the treasurer CFO, not the secretary general counsel, not the executive director of general operations.

These are the folks who typically prepare documents for filing. They navigate strategy. They contribute to the plan and the disclosure statement. And using the Brewer trust account to seed the Sea Girt with $50,000 and to pay the bankruptcy counsel facilitated keeping the expenses out of the NRA's purview and keeping the bankruptcy filing from the customary authorities.

In responding to the Court's question about whether the prospect of dissolution in New York legitimizes this filing, the case law does not support evading government enforcement as a legitimate function. The consequences of the NRA's actions are its own.

In filing by a solvent entity to avoid litigation in its relatively early stages with created venue, no clear board disclosure, no clear officer disclosure is cause to dismiss. But if the Court does not dismiss, then a Chapter 11 trustee or an examiner is an appropriate remedy.

For a trustee, the legal standard is cause. But if the Court finds cause, then the order to appoint is mandatory under the plain terms of the statute as interpreted by numerous circuit and lower courts.

The evidence meets the Fifth Circuit's clear and convincing standards. Some of the cases cited by the parties today in the briefing apply the preponderance-of-the-evidence standard under Grogan v. Garner, and arguably that is the standard after the 2005 amendments. But the record provides numerous examples of financial irregularities constituting gross mismanagement under the Code, and the clear and convincing standard is met.

Before the audit and the imposition of new cost controls in 2018, the record is unrefuted that Wayne LaPierre's personal expenses were made to look like business expenses. Wayne LaPierre's budget and expense approval was separate from the general budget and approval process. The $6-million house that was designed to be purchased through a corporation that the NRA and Ackerman McQueen would own stopped, but it started. LaPierre acquired suits for TV, 225,000 in business suits

charged to Ackerman McQueen and then charged back. The charter planes, LaPierre says these are for security. But the evidence is he picked up family. The evidence is that extra stops were not to be noted in the booking records. And the testimony is unrefuted that no NRA policy authorizes charter plane (indiscernible).

AMc charges were used for other expenses including a Landini's restaurant account where bills totaled in the thousands. One employee charged the NRA for $40,000 for her son's wedding. And the testimony is she has repaid that amount but otherwise has suffered no additional consequences. Woody Phillips, the former CFO treasurer for decades, when asked about executive vice-president Wayne LaPierre's expenses as well as his own, pled the Fifth Amendment.

This evidentiary record clearly and convincingly establishes that executive vice-president Wayne LaPierre has failed to provide the proper oversight. So then let's turn to the self-correction.

Even after the self-described course correction, the irregularities were not fixed. Those accused of irregularities including, for example, Phillips, were given lucrative consulting packages without any documentation that they did any work. The chief financial officer was not allowed to see the reimbursement calculations supporting the Schedule L, and some request for certification of reimbursement amounts were not

returned. No documentation came into evidence supporting the calculation of the repayment by the board members or others, including Wayne LaPierre.

When the chief financial officer did not sign the 990s, communication stopped. He says he was eventually fired. Some NRA witnesses say he resigned for health reasons. In any event, he refused to sign critical documents that were essential to show the accuracy of the corrective action, the repayments. He did not sign, and he was relieved of his duties.

And this brings us to the undisputed irregularities that have occurred since the bankruptcy filing. Almost two weeks into the bankruptcy filing, about the time the schedules and statements of financial affairs would have been due, Chief Financial Officer Spray says Wayne LaPierre terminated him. You have not even heard from the person who signed the schedules and statement of financial declarations.

It's not the former Chief Financial Officer Spray. It's not the Interim Chief Financial Officer Rowling, but David Warren who's the chief financial officer for for-profit entities. Mr. Warren is not even on the NRA organization chart that has been admitted into evidence.

Importantly, three years into the self-correction and post-petition, Wayne LaPierre signs the conflict-of-interest form dated April 7th, 2021 the same day he's testifying in this

Court. And he disclosed multiple yacht vacations. This is relevant because the yacht owners own MMP and related entities that are contractors with the NRA office and the NRA headquarters, building, and we don't know the rental terms.

Both the Ursling and Rowling testimony establishes that the MMP invoices more than double the 400,000 contractual amount consistently month after month. And Spray's testimony is that other contractors were brought in line. Wayne LaPierre himself signed the agreement with allegiance one of the yacht owners related entities without complying with the NRA's market analysis protocol.

So some were shielded from the self-correction because Wayne LaPierre failed to disclose conflicts and because internal procedures were not honored. This lack of accounting, this lack of accountability, the lavish personal spending, the termination of the chief financial officer who would not sign tax documents, financial irregularities, and misuse of funds amply justify the removal of the debtor-in-possession management in favor of a trustee.

However, even if the Court does not agree with our analysis and the facts or law that a trustee is mandated, management can and should on this record still be curtailed.

The Court should evaluate the examiner appointment under the legal standard, best interest of the creditors, because there's no evidence that the mandatory five-million

trustee threshold has been met. Given the scope of the problems, the movants' suggestion, the Journey team's suggestion of a $350,000 cap for an independent and thorough financial examination of the NRA, given the NRA's size is not sufficient.

Even though the examiner does not displace management, the Court, if the Court opts for an examiner should expand the powers to require that major expenditures and certification of expenditures go through the examiner before being paid. And the scope might include determining improper expenditures, ensuring that they're paid back, reviewing legal costs, imposing new financial controls, and improving significant expenditures.

Importantly, significantly, an examiner would be independent, and the examiner's report would be publicly filed to provide transparency, which brings me to why the CRO is not a proper remedy.

Chief restructuring officers should not be used to evade statutory remedies. And a request to hire a CRO that would report to a government structure that failed to detect and later failed to cure serious financial irregularities should not be approved by the Court. We made these arguments citing facts and law in the U.S. Trustee's objection to the chief restructuring officer.

But the subsequent trial revealed additional facts

that further demonstrate the improvidence of the chief restructuring officer. The CRO terms are unclear, as the testimony evidenced. And the CRO's answer to the ambiguities is impractical.

He suggests that matters be brought to the Court for resolution. But the Court's function is to decide important legal issues, not routine daily internal governance or financial control of a not-for-profit. It's unnecessary. The Bankruptcy Code provides remedies, the trustee or an examiner. These remedies are more than adequate for the task at hand.

The chief restructuring officer's testimony evidences that this same chief restructuring officer typically reports to boards, full boards in bankruptcy cases. The disclosure procedures are inadequate. He initially failed to identify material connections related to the hiring process. The $1-million bonus creates its own conflict of interest for the chief restructuring officer. It's not similar to his prior engagements.

It's not a reasonable exercise of business judgment when according to his own testimony he has not reviewed the schedules and statements of financial affairs, has not done an in-depth financial review, and while he has proposed some plan provisions, he has not read the plan that apparently was already approved by the board yesterday.

So, in summary, Judge Hale, there are unusual aspects

to this case. There are decades of connections between the NRA and its vendors or former vendors. Decades that many members of the board of directors have been on the board. They are long-time employees. Some of the connections are even familial.

And the NRA is a not-for-profit with a mission that includes advocacy. But, Your Honor, the NRA elected to be here. And having brought us here, the Bankruptcy Code controls. The strength of the Bankruptcy Code is that it brings a variety of remedies that anticipate the challenges that arise in a variety of contexts. Those remedies work. And under the facts of this case, the Court should impose one of them: dismissal, a trustee, or an examiner with expanded powers. Thank you.

THE COURT: Thank you, Ms. Lambert.

Why don't we hear from Mr. Herring and then we'll take a break and we'll start earlier than I normally start.

Mr. Herring, I think you had asked for five minutes.

MR. HERRING: Yes, Your Honor. It may seven or eight minutes, but certainly under ten.

THE COURT: We'll give you two or three extra there.

MR. HERRING: I appreciate that.

Well, Your Honor, may it please the Court, my name is Walt Herring and I'm here on behalf of the creditor, David Dell'Aquila or a creditor of David Dell'Aquila. Mr.

Dell'Aquila is a member of the Unsecured Creditors' Committee, has filed a partial joinder to the UCC motion. A partial joinder because while Mr. Dell'Aquila opposes the motions to dismiss and adopts the U.S. Trustee and the UCC's position on that point, he does not agree that the appointment of a CRO will halt the systematic abuses of the NRA's current management and the board for the reasons noted below, and the Chapter 11 trustee with limited power is what's needed in this case.

There's no question that mismanagement, abuse, and outright fraud have been a systematic problem in the NRA for years. Those issues have become well-known over the past several years and were well-chronicled in the prior closing statements this morning. Rather than waste time by repeating those issues, we will simply note the facts categorized and highlighted by the other movants at this hearing as confirmation of the undeniable certainty that something is definitely amiss with the NRA's management and board for years before this bankruptcy proceeding was initiated.

We do not believe, however, that those systematic abuses have been adequately addressed, unlike some parties in this litigation. The course corrections of the past few years we believe have been ineffective, and problems will still exist and continue to plague the NRA in the year to come if they are not addressed now.

As an example of those continuing systematic problems

and abuses, we would note some of the following. First, the board of directors is too big, 76 members; so big it's just ineffective and, in fact, chaotic. And that ineffectiveness and chaos has worked to the current management's benefit. The proposed CRO has recognized this problem when he stated it made sense for him to report to the three-member special litigation committee rather than the board.

Some may argue that a board provides a diversity of opinion and that one-third of the board is up for re-election each year ensuring new ideas and new vigor. Well, that all sounds good in theory, but the reality is something quite different. The reality is to be a board member, you have to be elected by the nominating committee chosen by the current management places a name on that election ballot. And who do you think gets appointed to the nominating committee and who gets nominated on the ballot? Let's just say that diversity of thought, strength of leadership do not appear to be particularly desirable characteristics for the candidates approved by the committee.

And the bylaws have changed in the last few years to make it virtually impossible to be a write-in candidate. As a result, the diversity and vigor of the board is highly questionable. Instead, the board simply rubber-stamps management's decisions and the one-third turnover does not have the desired effect. The results have been highlighted in this

proceeding, and they speak for themselves.

Arguably, the entire board should be charged with dereliction of their fiduciary duties, as Mr. Dell'Aquila has been arguing for years. Even their own "Buz" Mills testified in this proceeding that he believes the entire board should be replaced, including himself.

In addition, the prior business practices and systematic abuses continue. The fact that the major multi-million-dollar contracts are currently administered under oral arguments. For example, the MMP contract, Allegiance Creative Group contract, the Concord Social and Public Relations contract, they're all oral at this time and that's just simply unacceptable. These aren't small vendor contracts with paper clips and pencils. No legitimately run enterprise would operate this way.

Another example, Mr. LaPierre's expenses have not been submitted for review for the last two years and are still being withheld from discovery and scrutiny. How can anyone say that the abuses have been curbed when the information isn't even there to make an honest assessment?

Other examples, there's no companywide policy on charting jets, as the U.S. Trustee just pointed out. Perhaps, that's not a huge issue in and of itself, but it's emblematic that things really haven't changed that much. And how about the multiple lucrative severance packages doled out to loyal

former employees like Michel Marcellin, Robert Marcario, Robert Weaver? And even Woody Phillips who has repeatedly taken the Fifth Amendment rather than testify? Or a lucrative consulting contract for Marion Hammer that lasts through 2030, almost another decade?

So my favorites, though, are Craig Spray, the CFO who was hired to help reform the system that was fired for no apparent reason after he refused to sign the 2019 IRS Form 990. The president, the first vice-president, and the second vice-president as well as other important members of the management personnel refused to sign that same form because, according to Mr. Cotton, who was the CFO to tell him what to do.

Another one, the NRA continues to litigate a severance case with a total liability of two million and has spent to date $6 million in legal fees on a $2-million plane, and the case is ongoing. They paid the Brewer firm $17.5 million in the 90 days before bankruptcy, 2 million of that the day before they filed. And as has been noted here numerous times, the general counsel and the CFO were not even told of the bankruptcy filing until the filing had occurred.

One of those abuses you might excuse as a lapse. Two, you might say, well, that's just bad luck. Three, I'd start to ask some question. Seven, eight, nine -- and, again, these are all since the self-corrections have supposedly occurred. All these since then have taken place. How can

anyone seriously argue that the ship is being righted?

That doesn't look like righting the ship at all. It looks as if the ship is still sinking, maybe not as quickly but the holes are huge and the life boats are filling up quickly. Just ask Mr. Spray.

Another example of problems, in 2013, the NRA had a membership of five million, and Mr. LaPierre projected then that it would double in the next five years. A few days ago, after over seven years later, Mr. LaPierre testified that the NRA currently has 4.89 million members. In other words, under the direction and leadership of Mr. LaPierre, current management, and the board, the membership has basically stayed flat. It's stagnant at a time when the Second Amendment has never been under greater assault.

There are an estimated 100 million gun owners in the United States out of an estimated population of 331 million. Less than five percent are members of the NRA. What other CEO, what other management group would stay in power with that kind of performance?

So the facts just do not support the contention that the abuses are in the past, that thing started to turn for the good several years ago. The problems continue and will continue if left unchecked. But those problems are not going to be solved by the proposed CRO. Why? Because the CRO proposal doesn't give the CRO the power or authority needed to

address the real problems.

While we conditionally applaud the decision to have the CRO report to the SLC instead of the board, the definitions of core fundamental mission operations -- i.e., those are the operations outside the CRO's purview -- and the definition of management operations, those operations within the CRO's purview, are significant problems that will only lead to further abuses and mismanagement.

By way of example, a core fundamental mission operation, something outside the CRO's purview, includes a charitable program -- includes "charitable programs comprising the company's nonprofit mission." In prior years, the NRA has given large donations to Youth For Tomorrow. That's a charity with a very worthwhile goal of providing outpatient and inpatient services for children with acute psychological and behavior disorders.

It's a charity that's closely associated with the LaPierres. While certainly a worthwhile goal and mission, that is not the core mission of the NRA. Yet, that contribution to that charity would be out of the CRO's domain and purview.

And if the CRO objected to that or any other core fundamental mission operation or objected to the SLC's decision on the management operations, something within his purview for that matter, the only recourse this proposal has for the CRO would be an appeal to you, Judge Hale -- I'm sure you would

appreciate that -- or to submit a noisy resignation. That's it. Not much power there for the CRO.

Moreover, and perhaps more of a fundamental problem under the current CRO proposal, the real power lies at the three-member SLC. Obviously, the appointment of those members and the ability to remove and reappoint members is vital. We are convinced that the current management and the current board would continue to influence that process through its appointment of SLC members that are friendly to the board and management.

Now this is the same SLC whose current member Carolyn Meadows destroyed documents when the subpoena was coming. And it's the same SLC that has a member now who has said the CFO doesn't make policy for the company. We question whether the SLC as currently appointed is going to be effective.

In essence, the CRO, as proposed, has been or will quickly be emasculated. That's why we believe that the current management board will never voluntarily relinquish their control to a CRO. That's proven by the watered-down proposal, and that's what leads Mr. Dell'Aquila to support the alternate proposal of the UCC, the appointment of a Chapter 11 trustee with limited powers.

Yes, we understand that's a rare animal. In fact, we understand the U.S. Trustee has argued it can't be done. But as pointed out in the UCC's briefing, it can be done in

extraordinary circumstances. And if there ever was an extraordinary circumstance, this is it. The NRA has an extraordinary history with an extraordinary mission, and it's facing an extraordinary crisis.

To address the issue, the UCC has argued that it's too complex and it's too expensive for a trustee to step in and hit the ground running or it's too destructive, as has been argued by the UCC and others. So fine, leave the current management and board in place for continuity purposes, but let the trustee come in and select who those managers and board members should be and give the trustee the power to let them operate while he closely monitors that performance. But that trustee must have the power to remove and replace the management board at his or her sole discretion.

That alone would prevent the abuses of the past from continuing into the future. That is what we believe best serves the purpose of the NRA, the mission of the NRA, and best serves the millions of its members of the NRA who truly support the Second Amendment. You don't have to dissolve it. The trustee doesn't have to dissolve it. But you can appoint someone to ensure an experienced crew is steering the ship and that that crew is held accountable to that trustee.

In conclusion, Mr. Dell'Aquila is the voice of the rank-and-file member here at this proceeding, the only real voice of those members. Judge Journey has claimed he and his

group represent those members. But Judge Journey has been on the board and is still on the board. With all due respect, where has be been until now?

And his examiner proposal steps on and duplicates the role of the UCC. The New York Attorney General represents New York. The D.C. AG represents D.C. Ackerman has its own interest and claims. And the UCC represents a variety of creditors with varied interests, as evidenced by its members taking contrary positions on numerous issues. But only Mr. Dell'Aquila speaks for rank-and-file members. Those members who contribute their hard-earned dollars, 10, 20, 100 dollars at a time but they are, indeed, the life blood of the NRA.

Given the continuing systematic management problems, the continuing influence of the very people who cause those problems, and the emasculation of the CRO as proposed by the NRA, a trustee with limited powers is the only real option here. It may be a bold option; it may be an extraordinary option. But the Court should be bold; the Court should be extraordinary. This is the time to do that.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Herring.

Before we break, let me just go through my notes here. Mr. Strubeck, I show that on Thursday, y'all were thinking about a half an hour. Is that still right?

MR. STRUBECK: Yes, Your Honor. It is. It may be,

as Mr. Herring just suggested at the beginning, a couple of minutes longer, but I think that's about the right amount of time.

THE COURT: Sure. Yeah, I'm not going to hold anybody to the minutes. I may hold Mr. Garman to the hours, though, that he's requested.

And, Mr. Garman, I show you have three hours then. Is that still about right?

MR. GARMAN: Yes, sir. I'm going to try and do better than that, sir.

THE COURT: I know you will. Sometime in the middle of yours, if you could come to a logical just a resting spot for us to take an afternoon break, I think that's going to be appropriate.

Then my understanding is we're going to pause for 30 minutes and then the AG and Ackerman come back with the last word after that. Is that still the understanding?

(No audible response)

THE COURT: Okay. All right. So --

MR. GRUBER: Your Honor, this is Mike Gruber. I just want to confirm that Mr. Strubeck somehow goes before the last word that you've talked about Ackerman and the New York Attorney General getting.

THE COURT: Mr. Strubeck goes next, Mr. Gruber.

MR. GRUBER: Okay, thank you.

THE COURT: You're welcome.

All right.

MR. TAYLOR: Your Honor? Your Honor, this is Clay Taylor. We also reserved a brief rebuttal time, and I presume we would keep the same order.

THE COURT: Yeah. I think that would be fair. How much do you think you're going to need about?

MR. TAYLOR: We reserved up to 30 to 45 minutes, but we can be done in 10, Your Honor.

THE COURT: That's fine. I just didn't write that down on Thursday, and that's my bad on that, Mr. Taylor. But you're a movant, just like the other two are. Different relief, but you're certainly entitled to come back at the end, too.

What I would suggest --

MR. PRONSKE: Your Honor, if I might, I think that the New York Attorney General and Ackerman should have the last word and that Judge Journey is opposed to us, as well. So I think we would prefer that order.

THE COURT: Okay.

MR. TAYLOR: Your Honor, we were first filed and believe we should go last.

THE COURT: Let's just keep it in the order that we just did the first round.

I'm still trying to get out the words here. I'd like

to break now. It's 11:43, so why don't we come back at one. And I think we should have plenty of time to do all the closing that we need to close.

All right. We'll see y'all at 1 o'clock.

(Proceedings recessed at 11:43 a.m.)

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C E R T I F I C A T I O N

I, DIPTI PATEL, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Dipti Patel

DIPTI PATEL, CET-997

LIBERTY TRANSCRIPTS DATE: May 4, 2021